Supreme Court, U. S.
FILED
NOV 15 1979
MICHAEL RODAK, JR., CLERK

No. 79-630

IN THE

Supreme Court of the United States

OCTOBER TERM 1979

NELSON BUNKER HUNT, HERBERT HUNT, AND LAMAR HUNT,

Petitioners,

v.

COASTAL STATES GAS PRODUCING COMPANY AND COASTAL STATES MARKETING, INC.,

Respondents.

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DAN G. MATTHEWS
DANIEL K. HEDGES
LINDA L. ADDISON
800 Bank of the Southwest Building
Houston, Texas 77002
(713) 651-5151
Attorneys for Respondents

Of Counsel:
FULBRIGHT & JAWORSKI
800 Bank of the Southwest Building
Houston, Texas 77002
ROBERT E. WALLS
COASTAL STATES GAS CORPORATION
Coastal Tower
9 Greenway Plaza
Houston, Texas 77046

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APPENDIX A

LIBYAN PETROLEUM LAW

No. 25 of 1955 as Amended by:

1. ROYAL DECREE ISSUED ON MAY 21, 1955
2. ROYAL DECREE ISSUED ON JULY 3, 1961
3. ROYAL DECREE ISSUED ON JULY 9, 1961
4. LAW No. 6 OF 1962 ISSUED ON APRIL 26, 1962
5. LAW No. 6 OF 1963 ISSUED ON JULY 16, 1963
6. ROYAL DECREE ISSUED ON NOV. 20, 1965

Revised By:
IBRAHIM MOII. HANGARI

Publisher
LIBYAN ADVERTISING & PUBLISHING
ESTABLISHMENT (LIAD)

INTRODUCTION

In the Name of God the compassionate, the Merciful.

The first legislation regulating the oil affairs in the Kingdom of Libya was issued on the 21st April 1955. A previous legislation dealing with mining issued on 1953 was prevailing by then, entitled: "The Mining Law" No. 9 for 1953. However the application of this law in respect to petroleum was cancelled upon the issue of the Petroleum Law for 1955 as referred to above.

The first Libyan Petroleum Law included certain provisions which were considered most encouraging, a matter which induced several International Oil Companies to apply for oil concession and proceed to explore oil in the Libyan soil. Fifty-one oil Concessions were granted to 17 Companies during the first year following the issue of the said Petroleum Law.

Exploration Operations were thus carried out in Libya in a most astonishing manner. The famous Zeltin oil field was discovered in 1959, namely in less than five years after the issue of the Libyan Petroleum Law. Discoveries followed constantly leading to the fact that Libya soon became one of the oil producing and exporting Countries. On 25th October 1961, Libya celebrated the exportation of the first consignment of our crude oil to the world markets. The Celebration which took place in Mersa Brega oil port of the Esso Standard Libya Inc. were honoured by the presence of Our beloved Lord His Majesty King Idris I, may God preserve him.

It was obvious that the motives behind the issue of the Petroleum Law for 1955 was to induce largest number of Oil Companies to come into Libya and carry out their oil activities thereon, since no one was absolutely assured that the Libyan soil embodies within its layers such a tremendous savings of Black Gold.

Now that oil has become of realistic existance, it has been deemed necessary that the Libyan Government amends the Libyan oil legislation in compliance with the development of Oil Industry in Libya.

The following amendments have — as far — been introduced to the original Petroleum Laws of 1955:

1. The Royal Decree issued on 21st May 1955
2. The Royal Decree issued on 3rd July 1961
3. The Royal Decree issued on 9th Nov. 1961
4. Law No. (6) of 1962 issued on 26th April 1962
5. Law No. (6) of 1963 issued on 16th July 1963
6. The Royal Decree issued on 20th Nov. 1965

As regards the first amendment, a merely formal matter was concerned dealing with the effective date of the Petroleum Law for 1955, whereas the original text of Paragraph (1) of Article 25 of the said law stated as follows:

> "This Law shall be entitled (The Petroleum Law for 1955) and shall come into effect thirty days after the date of its publication in the Official Gazzette".

The above paragraph was thus amended by the insertion of the following clause thereto:

> "Except for Articles 2 and 24 which shall be effective as from the date this Law is issued".

The first major amendment effected to that Law was included in the Royal Decree issued on 3rd July 1961, whereby Article 2, 7 and 8, also paragraph (1) of Article 9, articles 10, 12, 13, and 14, in addition to paragraph (1) of article 16 and articles 17 and 24 of the original law were all amended. Paragraph (9) of Article (9) was completely deleted. Paragraph (12) of Schedule I, "reconiscence permits" was also amended so as to include a provision pro-

hibiting denouncement of permits without the approval of the Petroleum Commission, which might impose any terms and conditions that might be deemed appropriate to the public interest. Items 6, 7, 8, and paragraph (2) of clause (9), also paragraph (1) of clauses 10, 25, 28 and 30 of Schedule II, covering the concession agreement were also amended so as to comply with the new provision of the amended law.

The most important matter dealt with by virtue of the Royal Decree issued on 3rd July 1961, amending certain provisions of the Petroleum Law for 1955 were —

Firstly:

The petroleum commission has been authorised to decide upon the different conflicting applications for oil concessions in Libya. The said authority was not strictly defined in the original text, whereas it was provided that conflicting companies may settle their applications there between within a period of thirty days or more, otherwise the Petroleum commission would carry out intermediate negotiations between them.

Secondly:

It has included provisions stipulating the basis for the surrender of a concession area in accordance with the provisions of the law. The new provision introduces a better assurance of the interests of the Libyan side.

Thirdly:

The increase of the concession fees and surface rentals thereof in a considerable manner compared with the fees and rentals stipulated in the original law.

Fourthly:

The omission of the Compensation subsidiaries and the

increase of the Libyan Government's revenues to almost 50% of the profits.

The Government, in an attempt to induce concession holders to amend their concession agreements in compliance with the provisions of these amendments as included in the validity of the concession period — in respect of all Oil Companies approving the amendments — by a period equivalent to that between the date the concession agreement was awarded and the effective date of the Royal Decree. Furthermore, it prohibits the award of any new oil concession to any concession holder unless such a concession holder undertakes to amend his concession in accordance with the provisions of this Royal Decree.

As regards the Royal Decree of 9th November 1961 it included the insertation of two new articles, namely 5 bis and 5 bis a. to the Royal Decree of the 3rd July 1961, also the amendment of paragraph (6) of Article 14 and clause 8 of the Schedule II annexed there in addition to the amendment of clause 16 of Schedule II.

Law No. (6) for 1962 included a partial amendment concerning the competences of the Petroleum Commission and its powers, following the establishments of the Ministry of Petroleum Affairs. (The former Petroleum Commission was previously supervised by the Minister of National Economy). Certain authorities were granted to the minister including his assignment of a representative to attend the Commission's meetings, also that he may approve or disapprove to its resolution and the authority to appoint a director to Petroleum Affairs.

Law No. (6) for 1963, did not include any provision relating to the contractual right of concession holders since it included a merely procedural amendment namely the cancellation of the Petroleum Commission and the refer-

ence of all its assets and liabilities to the recently established Ministry of Petroleum Affairs. This amendment has been reflected by the amendment to the Libyan Kingdom Constitution, whereby the Federal system, justifying the existance of the Petroleum Commission has been omitted.

The second basic amendment effected on the Libyan oil legislation was the one introduced by the Royal Decree issued on 20th November 1965, which is considered the most important amendment ever affected.

By virtue of this Royal Decree, Libya applied the (OPEC) formula settlement of expencing Royalty, thus replacing the "Realized prices basis by the posted prices basis. This would bring the land of Petroleum industry in Libya to the level achieved by Middle East Countries members of the Petroleum exporting countries Organization (OPEC).

A summary of the major provisions included in the said Royal Decree are mentioned herein:

1. The expensing of Royalty, thus Royalty is included in the expenditures of the concession holder rather than being considered a down payment as from the Government's share of Profits.
2. Marketing expenses are limited to ½ U.S. cent only per barrel. Such expenses were included in the discounts offered by the Company to meet competition in oil market.
3. Discounts of the posted prices were fixed so as not to exceed 7½% for the year 1965 and 6½% in respect of the year 1966.
4. All oil Companies would receive equal treatment. No Company shall be allowed to enjoy a better position than the others in respect of payments of taxes.

5. The application of the International Law principles in Arbitration.
6. Settlement of the outstanding financial disputes between the Libyan Government and the concession holder prior to the effective date of the new law. (1st January 1965).
7. Regulating of the basis governing the purchase by the Libyan Government of crude oil from the Company whereas the Government would be treated as a third party, also the determination of the quantities of crude oil that the Government may purchase from the Company.
8. No new concessions shall be granted to a Company in possession of concessions in Libya granted before the issue of this Royal Decree unless such a Company approves to amend its concession agreements in accordance with the new provisions of the Royal Decree referred to.

I have the pleasure to provide to those concerned in the Petroleum Industry and especially in Libya, a complete revised copy of the Libyan Petroleum Law comprising the various amendments, which have been very carefully revised. In preparing this copy I have observed the following basis:

1. Reference to Petroleum Law of 1955 in its original text.
2. The insertion of the amendment in the original text of the law in the manner whereby such amendments were introduced in the Royal Decrees and laws issued thereafter amending certain provisions of the Petroleum Law. No. 25 for 1955. The text is thus amended wherever required, omitted wherever omission is stip-

ulated, and inserting a new paragraph wherever it is so mentioned.

3. The new articles included in the different amendments of the original law, which are added thereto are placed in turn at the end of this book for easy reference.

Thus the reader will find in this book, the Libyan Petroleum Law in its latest text comprising the various amendments affected thereupon. One important feature of this book is that it provides an easy reference. A reader may refer to any provision of the Libyan Petroleum Law in this book without having to come through all the other amendments.

In order to ensure the full benefit of this book, I have included therein the complete English version of the Law, which introduces a careful and precise translation from the Arabic text of the provisions of the Law. In preparing the English copy of this book, I have depended upon the official English text of law as issued by the competent authorities in the Libyan Government.

I do sincerely hope that Oilmen concerned about Petroleum Industry and especially in Libya may find this humble effort as useful.

May God guide us to the best.

Ibrahim Hangari
Tripoli Dec. 5, 1965

PETROLEUM LAW NO. 25 OF 1955 IN ITS LATEST FORM AS AMENDED BY ROYAL DECREE LAW ISSUED ON 20TH NOVEMBER 1965 AND PUBLISHED IN THE OFFICIAL GAZETTE ON 22ND NOVEMBER 1965

The Senate and the House of Representatives have passed the following Law, which,

WE, IDRIS THE FIRST, King of the United Kingdom of Libya, have sanctioned and do hereby promulgate: —

ARTICLE 1

Petroleum Property of State

(1) All petroleum in Libya in its natural state in strata is the property of the Libyan State.

(2) No person shall explore or prospect for, mine or produce petroleum in any part of Libya, unless authorized by a permit or concession issued under this Law.

ARTICLE 2

"High Council of Petroleum Affairs"

(1) A Council shall be formed in the Ministry of Petroleum Affairs under the name "High Council of Petroleum Affairs," consisting of:

a) Minister of Petroleum Affairs — Chairman

b) Minister of Finance — Member

c) Minister of National Economy — Member

d) Minister of Planning and Development—Member

e) Minister of Industry — Member

f) Governor of the Bank of Libya — Member

g) Three Members with experience in fields of Petroleum Affairs or Finance or Economy or Industry or Law. They will be appointed by the Council of Ministers for two years renewable. The same decision shall fix their remuneration.

The Council may ask for the help of any of those whose opinion or experience may be required.

(2) The High Council for Petroleum Affairs shall be concerned with:

a) Studying petroleum policy within the State's General policy.

b) Studying the best means for preserving and exploiting the oil wealth.

c) Expressing views on drafts of laws and regulations related to Petroleum Affairs, as well as on matters which the Minister of Petroleum Affairs may present to the Council.

d) Expressing views on the granting of permits for exploration and on the surrender of concession areas.

e) Expressing views on granting or cancelling concessions, accepting or surrendering them up, and on the decisions to recourse in arbitration, and on fixing the time for opening the applications for concessions.

(3) Matters in Paragraphs "d-e" should be passed to the Council of Ministers for approval before any final decision is taken on them.

ARTICLE 3

Petroleum Zones

For the implementation of this Law the Libyan territory will be divided into four petroleum sections:

Section 1 includes the regions of Tripoli, the Western Mountains, Zavia, Hems and Misurata.

Section 2 includes the regions of Benghasi, Green Mountain, Derna, which are north latitude 28.

Section 3 includes the regions of Benghazi, Green Mountain and Derna, south of latitude 28.

Section 4 includes the regions of Sebha and Ubari.

ARTICLE 4

Boundaries

(1) This law shall extend to the seabed and subsoil which lie beneath the territorial waters and the high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya. Any such seabed and subsoil adjacent to any Zone shall for the purpose of this Law be deemed to be part of that Zone.

(2) If there is doubt as to the boundary of any Zone the Ministry of Petroleum Affairs shall determine the boundary of such Zone for the purposes of this Law only; and if by reason of such determination it becomes necessary for the applicant to amend his application, or to make a new application, he shall be allowed one month to do so after receipt of a request so to do, without loss of priority.

(3) If a subsequent determination of the boundaries leads to an adjustment of the boundaries as determined by the Ministry of Petroleum Affairs, such adjustment shall not affect the validity or extent of permits or concessions granted within the area or areas affected by the adjustment.

ARTICLE 5

Eligible Applicants

(1) The Ministry of Petroleum Affairs shall consider applications for permits or concessions submitted by eligi-

ble applicants only, and in determining the eligibility of any applicants the Ministry of Petroleum Affairs shall have regard to the following:

a) The furtherance of the public interest.

b) (i) The applicant's compliance with relevant Laws and Regulations.

(ii) his previous activities in the petroleum industry.

(iii) his previous experience in the conduct of similar operations.

(iv) his financial and technical capacity to conduct the contemplated operations.

(2) In determining the eligibility of an applicant who is a subsidiary of a company or a member of a group of companies, there shall be taken into consideration the possession of the aforesaid qualifications by the parent company or group of companies of which he is a member and the extent of the availability to the applicant of such qualifications.

ARTICLE 6

Permits

(1) Applications for permits shall be submitted in triplicate to The Ministry of Petroleum Affairs which shall forward a copy to the Minister. Separate applications shall be submitted in respect of each petroleum zone.

(2) The applications shall show the area the applicant desires to work, and contain short particulars in respect of the matters referred to in Article 5 of this Law. The applicant shall, at the request of the Ministry of Petroleum Affairs, furnish any further relevant information. All information submitted under this paragraph shall be treated as confidential.

(3) The Ministry of Petroleum Affairs may grant a permit in the form set out in the First Schedule to this Law and not otherwise, provided that the permit may contain such minor non-discriminatory variations as may be required to meet circumstances of any particular case.

(4) Such a permit may be granted in respect of any area and shall entitle the holder thereof to carry out the operations permitted therein within the specified area and in accordance with the terms of the permit; provided however, that nothing in this paragraph shall entitle the holder of the permit to impede in any way the work of any concession holder, or to enter into prospecting and development sites without the express permission of the concession holder.

(5) The grant of a permit does not of itself entitle the holder thereof to a concession in respect of any area.

(6) A permit shall be granted on payment of the fee specified in the First Schedule hereto.

(7) A permit may be granted for a period of one year and may be renewed on payment of the specified fee.

ARTICLE 7

Applications for Concessions

(1) The Ministry of Petroleum Affairs shall announce from time to time by notice published in the local and world Press the areas in respect of which concessions may be applied for.

(2) The Ministry of Petroleum Affairs shall by notice published in the local and world Press invite those who wish to apply for concessions in the areas mentioned in paragraph (1) of this Article to submit their applications in triplicate in a sealed envelope delivered to the Main Offices of the Ministry of Petroleum Affairs. The Ministry of

Petroleum Affairs shall fix a closing time and date for the delivery of the applications and shall not consider any application which is delivered after such time and date.

(3) The Ministry will invite registered mail applicants for concessions to send a representative to the Ministry's offices on a fixed day and hour to attend the opening of the applications for concessions. If the representative of the applicant fails to attend at the fixed hour and date this shall be considered as a refusal of invitation. Applications will be opened by those entrusted by the Ministry to do so in the presence of the applicants who accepted the invitation. The first copy of each application will be signed by those entrusted to open them and by the representatives of the applicants who accepted the invitation.

(4) It shall not be permissible to amend or vary an application after it has been opened and signed as mentioned in paragraph (3) hereof.

(5) The Ministry shall send a copy of each application to the Minister.

(6) Each application shall contain short particulars in respect of the matters referred to in Article 5 of this Law. The applicant shall, at the request of the Ministry of Petroleum Affairs, furnish any further relevant information which may be required by the Ministry and which relates to his application. All information supplied under this paragraph shall be treated as confidential.

(7) The applicant may include in his application particulars of any economic and financial benefits and advantages and other things which he is willing and able to offer in addition to those stated in this Law and the Second Schedule hereto.

ARTICLE 8

Conflicting Applications

In the event of more than one application being submitted for a concession over the same area the Ministry of Petroleum Affairs shall have absolute discretion as to which application to accept. In making its decision the Ministry shall take into account such additional economic and financial benefits and advantages and other things mentioned in paragraph (7) of Article 7 of this Law as are offered in the applications.

ARTICLE 9

Grants of Concessions

(1) The Ministry of Petroleum Affairs shall grant concessions in the form set out in the Second Schedule to this Law. The Ministry may include in these concessions any additional benefits and advantages which are offered by the applicant under paragraph (7) of Article 7 of this Law, provided that such additions shall not contain conditions or terms that reduce any of the rights, benefits or privileges to which the Ministry is entitled under the terms of this Law and the Second Schedule hereto.

(2) Before the grant of a concession, the Ministry of Petroleum Affairs may require the applicant to furnish a written undertaking to abstain from all political activities in Libya.

(3) An applicant may be required before the grant of a concession to deliver to the Ministry of the Petroleum Affairs a guarantee by way of bond or Banker's guarantee in a sufficient sum not exceeding fifty thousand Libyan pounds (£L.50,000) to secure the due performance of his obligations under all concessions held by him in Libya. Such bond or Banker's guarantee shall be maintained at a con-

stant figure throughout the life of the concession, and such bond or Banker's guarantee shall be accepted by the Director of Customs in lieu of any bond he may require under the Customs Law.

(4) Concessions shall be granted for the period of time requested by the applicant provided that such period shall not exceed (50) years. A concession may be renewed for any period such that the total of the two periods does not exceed sixty (60) years.

(5) No concession may be granted in respect of any area included in any existing concession granted hereunder.

(6) The Ministry of Petroleum Affairs may however, grant concessions covering adjoining areas lying in two or more Zones.

(7) The boundaries of every concession granted hereunder shall conform as fair as possible to the grid lines of the official map of the Ministry.

(8) The maximum number of concessions and the total areas which may be held at onetime by any person are as follows:

a) Three concessions in each of the First and Second Zones and four concessions in each of the Third and Fourth Zones provided that:

(i) the Ministry may grant concessions in excess of the maximum number permitted hereunder and shall give reasonable consideration to applications submitted for that purpose;

(ii) no concession in which there is an oil or gas well shall be included in computing the number of concessions held by a concession holder;

b) 30,000 square kilometres in each of the First and Second Zones and 80,000 square kilometres in each of the Third and Fourth Zone.

(9) The concession holder shall have the right to enter and occupy free of charge for the purpose of his operations under any concession granted under this Law and land within the concession area other than private land, provided it is not then in the lawful occupation of some person.

(10) If the concession holder fails to agree with a private landowner or lawful occupier of other than private land as to the terms on which he may enter and occupy the land in question the concession holder shall immediately notify the Director. If the occupation is to be of a temporary nature, not exceeding one year, the Director shall authorize such temporary occupation upon deposit by the concession holder with the Ministry of Petroleum Affairs of a sum by way of reasonable compensation to such landowner or lawful occupier for loss of use of and damage to the interest in the land as the Director shall determine. If the occupation is to be for a longer period than one year the Ministry shall authorise occupation by the concession holder of the land in question upon deposit by the concession holder with the Ministry of such sum by way of reasonable compensation as the Ministry shall determine and the Ministry shall direct appropriate proceedings to be taken to put the concession holder into possession of the land under the law from time to time in force, as if the concession holder's operations were in all respects a work of public utility. In the event of any dispute as to the nature and extent of the interest of claimants to the land or the amount of compensation payable by the concession holder, the Ministry shall refer the dispute for determination by an appropriate court of law and the Ministry shall pay to the respective claimants such

sum by way of compensation as may have been determined by the Court. The Ministry shall pay to or obtain from the concession holder (as the case may be) the amount by which the sum deposited by the concession holder exceeds or falls short of the total compensation payable to the claimants.

(11) The concession shall not confer upon the concession holder the right to do any work within the precincts of cemeteries, places used for religious worship and places of antiquity as defined in the Antiquity Laws from time to time in force. Any works of art or antiquity discovered by the concession holder shall be subject to the law from time to time in force.

(12) No drilling or any dangerous operations shall be conducted within 50 meters of any public works or permanent builders without the previous consent of the Director, and subject to such conditions as he may impose.

ARTICLE 10

Surrender

(1) Within a period of five years from the date of the granting of a concession, the concession holder shall reduce the concession area to 75% of its original size; within eight years from the said date, the concession holder shall further reduce the concession area to 50% of its original size and within ten years from the said date the concession holder shall further reduce the concession area to 33⅓% of its original size in the case of areas located in the First and Second Zones and to 25% of its original size in the case of areas located in the Third and Fourth Zones.

(2) The concession holder give one month's notice in writing to the Ministry of Petroleum Affairs of the areas which it will relinquish under paragraph (1) hereof.

(3) The concession holder shall be entitled at any time, by giving three months' notice in writing to the Ministry, to surrender the whole or any part of a concession area.

(4) Any area which the concession holder gives up under paragraphs (1) and (3) shall be freely chosen by the concession holder provided that the following conditions shall be followed:

a) Unless the Ministry in special cases agrees otherwise the surrendered areas shall consist of only one block except that if the concession area exceeds 12,000 square kilometers it may consist of two blocks.

b) The surrendered area shall be reasonably compact and be bounded as far as possible by the grid lines of the Official Map of the Ministry and bordered on one or more concession borders unless the Ministry in special cases agrees otherwise.

(5) Notice of any reduction or surrender under this Article shall be accompanied by a map referring to the Official Map of the Ministry and a description indicating the precise extent of the land to be surrendered and the land to be retained.

(6) The concession holder shall continue to enjoy the full rights granted to him under the respective concession over the areas retained by him, and shall in respect of any lands he gives up as aforesaid, except as provided in Clause 26 of the Second Schedule to this Law, cease to enjoy any of the rights conferred upon him by the concession and to bear any of the responsibilities thereby imposed upon him except as may relate to any act of the concession holder in the said lands before they were given up without prejudice to the rights of the concession holder to the easements he may exercise over the surrendered areas.

ARTICLE 11

Working Obligations

(1) The holder of any concession granted under this Law shall, within eight months of the grant of such concession, commence operations to explore for petroleum within the concession area. He shall diligently prosecute all his operations under the concession in a workmanlike manner and by appropriate scientific methods. In furtherance thereof he shall spend in Libya, or elsewhere, not less than the following sums or their equivalent on, or in connection with the said operations including general organisational, overhead and administrative expenses connected therewith:

a) In respect of all concessions in the First and Second Zones:

During the first five years at the average rate, over the period and over the total area held in the Zone, of one and a half Libyan pounds (£L.1½) per square kilometre per annum;

During the next three years at the average rate, over the period and over the total area held in the Zone, of three and a half Libyan pounds (£L.3½) per square kilometre per annum;

and thereafter during each successive five year period at the average rate over such period of six Libyan pounds (£L.6) per square kilometre per annum.

b) In respect of all concessions in the Third and Fourth Zones:

During the first eight years at the average rate, over the period and over the total area held in the Zone, of one and a half Libyan pounds (£L.1½) per square kilometre per annum;

During the next four years at the average rate, over the period and over the total area held in the Zone, of three and a half Libyan pounds (£L.3½) per square kilometre per annum;

and thereafter during each successive five year period at the average rate over such period of six Libyan pounds (£L.6) per square kilometer per annum.

(2) Any sum spent during any of the working periods specified above in excess of the minimum sum prescribed for that period shall be carried forward as a credit to the Company against the expenditure requirements for the following period or periods.

(3) If at the expiration of one half of any of the working periods specified in sub-paragraphs (a) and (b) above it appears to the Ministry that a concession holder has seriously neglected his obligations in respect of any Zone, The Ministry may require such concession holder to deliver to it a guarantee in the form of a bond or banker's guarantee in a sum which shall not exceed the total outstanding expenditure obligations remaining unfulfilled in that Zone. Such guarantee may at the end of the said period be forfeited to the Ministry to the extent that the concession holder may have failed to fulfill his expenditure obligations.

ARTICLE 12

Pipeline Facilities

Any concession holder having pipeline capacity surplus to his own requirements shall make such surplus available for the transport of petroleum of any other concession holder desiring to use the said surplus on terms agreed between them and approved by the Ministry of Petroleum Affairs.

If they fail to agree or if the Ministry does not approve the terms agreed upon, the Ministry shall propose terms of user.

If any of the concession holders do not accept the terms proposed by the Ministry the Ministry shall within two months from such non-acceptance submit the matter to a Committee of three persons one to be nominated by the concession holder having the surplus capacity, another by the Ministry and the third by the President of the Supreme Court of Libya. This Committee shall settle the terms of user and its decision or that of a majority of its members shall bind the respective concession holders and the Ministry. This decision shall be published in the Official Gazette.

Pending agreement on the terms of user or decision of the Committee in accordance with the provisions of this Article, the concession holder desiring to use the surplus capacity shall be entitled to do so in accordance with the terms proposed by the Ministry. Upon the terms being agreed upon or decided by the said Committee, as the case may be, they shall have retrospective effect to the commencement of such user.

ARTICLE 13

Fees, Rents and Royalties

(1) The concession holder shall in respect of each concession granted hereunder pay the following fees, rents and royalties:

a) An initial fee of 100 Libyan Pounds per 100 square kilometres or pro rata for part thereof of the concession area upon the grant of the concession.

b) An annual surface rent per 100 square kilometres or pro rata for part thereof the concession area held as follows:

(i) For concessions located within the First and Second Zones, ten Libyan pounds for each of the first eight years, twenty Libyan pounds for each of the next seven years, provided that if at any time during this period of fifteen years Petroleum is found in commercial quantities the annual rent shall immediately increase to 2500 Libyan pounds for the remainder of the said period and a pro rata proportion of this increased rent shall be payable in respect of the year in which the find occurs.

(ii) For concessions located within the Third and Fourth Zones, five Libyan pounds for each of the first eight years, ten Libyan pounds for each of the next seven years provided that if at any time during this period of fifteen years Petroleum is found in commercial quantities the annual rent shall immediately increase to 2500 Libyan pounds for the remainder of the said period and a pro rata proportion of this increased rent shall be payable in respect of the year in which the find occurs.

(iii) 3500 Libyan pounds for each of the five years from the expiry of the fifteenth year from the granting of the concession.

(iv) 5000 Libyan pounds for each year thereafter.

(c) A royalty of 12½% of the value of the total field production of all natural gasoline recovered by the concession holder from the concession area and of all petroleum (excluding natural gas) won and saved into field storage freed of water and foreign substances after deduction of the quantities of any petroleum, petroleum products and natural gasoline used in Libya by the concession holder in the course of his operations hereunder.

The value of crude oil for royalty purposes shall be calculated on the basis of the posted price as defined in Article 14 (5) hereof.

The value of natural gasoline and of petroleum other than crude oil for royalty purposes shall be calculated in a manner to be agreed upon from time to time between the Ministry of Petroleum Affairs and the concession holder.

(d) A royalty of 12½% of the sale price less any cost of transport from the Wellhead paid by the concession holder and not recovered from the purchaser in respect of all natural gas derived from the concession area and sold by the concession holder for delivery in Libya.

(e) A royalty of 12½% of the value of all natural gas derived from the concession area and exported by the concession holder, the value of the natural gas for this purpose being the sale price after deducting any handling charges, duties and imposts and the cost of transport from the Wellhead paid by the concession holder and not received from the purchaser.

(2) The Ministry of Petroleum Affairs shall be entitled by notice in writing to the concession holder of not less than three months to take in kind the whole or part of the royalty stipulated in this Article and due in any complete year. Any petroleum, or natural gasoline to which the Ministry becomes entitled by virtue of the exercise of this right shall be delivered by the concession holder f.o.b. Seaboard Terminal in Libya.

(3) Sums payable by way of royalty in respect of any year for a concession area shall be reduced by the amounts paid as surface rent in respect of the year, provided that in no case shall the amounts of rent paid be less than £L2500 per 100 square kilometres or pro rata for part thereof.

ARTICLE 14

Taxation and Division of Profits

(1) The concession holder shall pay such income tax and other taxes and imposts as are payable under the Laws of Libya but shall not be subject to any form of taxation whether Government or Municipal or other exaction of such nature as to render him liable to taxation or other dues not payable by persons in general operating in Libya other than fees, royalties and surface rents made payable under this Law:

Provided however that —

(a) If in respect of any complete year from and after the effective date as hereinafter defined the total amount of the fees, rents and royalties except 12½% of the value of crude oil exported, as herein defined, payable under this Law and income tax and other direct taxes for which a concession holder is liable in respect of his operations and income therefrom under all petroleum concessions held by him in Libya falls short of 50% of his profits as hereinafter defined for that complete year the concession holder shall pay to the Ministry such sum by way of surtax as will make the total of his payments equal to 50% of the profits aforesaid.

(b) If in respect of any complete year from and after the effective date the total amount of fees, rents and royalties, except 12½% of the value of crude oil exported, as herein defined, payable by the concession holder under this Law and income tax and other direct taxes for which the concession holder is liable as aforesaid exceeds 50% of the said profits of the concession holder during that complete year, he shall be entitled to deduct such excess from the income tax, surtax and

other direct taxes payable in that year or following years.

(c) For purposes of paragraphs (1), (2) and (9) of this Article, "12½% of the value of crude oil exported" shall mean: 12½% of the value calculated on the basis of the applicable posted prices of crude oil exported by the concession holder in any such complete year and on which royalty is payable by the concession holder in that year.

(d) For purposes of this Law crude oil sold by the concession holder for export from Libya (which term "for export" as used herein includes export before or after sale) shall be deemed to be crude oil exported by the concession holder. With respect to crude oil taken in kind by the Libyan Government under this Law, being in payment by the concession holder in whole or in part of the royalty stipulated in this Law, such crude oil shall be deemed to be crude oil exported by the concession holder if such crude oil is delivered to the Libyan Government by the concession holder for export.

(2) In applying this Article:

"complete year" means the financial year of the concession holder. The first year, however, shall include the period from the effective date to the end of the financial year of the concession holder and the last year shall include the period from the beginning of the financial year of the concession holder to the termination of the concession.

"effective date" means the date on which the concession holder first commences regular exports in commercial quantities or regular sales in commercial quantities of petroleum derived from any of his concessions in Libya.

"Profits" for the purposes of paragraph (1)(a) and (1)(b) mean in respect of any complete year after the effective date the income resulting to the concession holder from his operations in Libya after deducting the following items (a and b) insofar as they are fairly, properly and necessarily attributable to the operations of the concession holder in Libya, and item (c).

(a) Operating expenses and overheads the details of which are defined in Regulations excluding the fees, rents, royalties and income tax and other direct taxes referred to in (1)(a) and (1)(b) above.

(b) Depreciation of all physical assets in Libya at the rate of 10 per centum per annum & amortisation of all other capital expenditure in Libya at the rate of 5 per centum per annum until such assets and expenditure are fully written off. The unamortised balance of the costs of physical assets permanently put out of use may be deducted in the year when such assets are scrapped or sold.

(c) 12½% of the value of crude oil exported, as defined in paragraph (1)(c) above.

(3) Exploration and prospecting expenses, intangible drilling costs, as defined by Regulations but only to the extent that such expenses and costs are not incidental to the procurement or installation of physical assets, and the costs of drilling wells not productive of petroleum in commercial quantities may in respect of expenditure incurred after the effective date, be deducted in the year in which the expenditure is incurred under paragraph (2)(a) of this Article or may be capitalised and amortised as provided in paragraphs (2)(b) of this Article. The concession holder may either deduct or capitalise each such classification of

expenditure. The election once made is final and binding for all time unless the Ministry in special cases agrees otherwise. Expenditure capitalised under this paragraph and attributable to areas surrendered under paragraph (1) of Article 10 of this Law may be deducted in the year of surrender insofar as not already amortised.

(4) Nothing in this Article shall be taken as permitting the deduction under paragraph (2)(a) or (b) of this Article of the following items of expense in determining the profits for the purpose of paragraphs (1)(a) and (1)(b).

i) Penalties paid under Article 22 of this Law or any sum forfeited to the Ministry under Article 11(3) of this Law.

ii) Foreign taxation paid on income derived from sources within Libya.

iii) Interest or other consideration paid or suffered by the concession holder in respect of the financing of his operations in Libya.

iv) Expenditure incurred in relation to the organising and initiating of petroleum operations in Libya.

(5) In applying this Article:

"income resulting from the operations of the concession holder in Libya" means:

a) in relation to crude oil exported by the concession holder from Libya: total gross receipts realized by the concession holder from such export.

b) in relation to other operations of the concession holder in Libya the income to be ascertained in a manner to be agreed between the concession holder and the Ministry of Petroleum Affairs.

The value of petroleum and natural gasoline taken in kind under Article 13 hereof shall be deemed to form part of such income.

"Posted price" means the price f.o.b. Seaboard Terminal for Libyan crude oil of the gravity and quality concerned arrived at by reference to free market prices for individual commercial sales of full cargoes and in accordance with the procedure to be agreed between the concession holder and the Ministry or if there is no free market for commercial sales of full cargoes of Libyan crude oil then posted price shall mean a fair price fixed by agreement between the concession holder and the Ministry or in default of agreement by arbitration having regard to the posted prices of crude oil of similar quality and gravity in other free markets with necessary adjustments for freight and insurance.

(6) Were in respect of any complete year after the effective date the total of the deductions allowed under paragraph (2) of this Article for the determination of profits exceeds the income in respect of that year before taking the said deductions the resulting excess shall be carried forward and as far as may be deducted from the profits of subsequent complete years up to a maximum of 10 years.

(7) A permit or concession holder who participates in joint operations in connection with such permit or concession may, in respect of such operations, report his rateable proportion of income therefrom and his permitted expenses therein and make all permitted elections independently of the other person or persons participation in the joint operations, provided that one or more of the persons in the joint operations is carrying out other independent operations in Libya under this Law. Income and permitted

expenses so reported may be consolidated with those in respect of other operations being carried out by him in Libya under this Law.

(8) In computing profits as herein defined sound and consistent accounting practices usual in the petroleum industry shall be employed. Where more than one such accounting practice prevails the Ministry shall decide which practice is to be applied by the concession holder.

(9) As soon as practicable after the end of each complete year referred to above and in any event not later than four months after the end of each complete year the concession holder shall submit to the Ministry accounts showing that year's profits as defined in this Article. Simultaneously with the submission of the accounts the concession holder shall pay to the Ministry a sum which together with any fees, rents royalties "except 12½% of the value of crude oil exported, as herein defined," and direct taxes already paid for the year equals 50% of the profits shown by the said accounts. This payment shall be treated by the Ministry as a payment on account of income tax and surtax.

If when the actual amounts of income tax and surtax payable have been finally determined the payment on account is less than the total of the income tax and surtax payable, the concession holder shall pay the balance forthwith. If when the actual amount of income tax and surtax payable has been finally determined the payment on account is more than the total of the income tax and surtax payable the balance shall be carried forward and treated as a payment on account of future income tax and surtax.

ARTICLE 15

To whom fees, rents, royalties, surtaxes and income taxes payable

All fees, surface rents, royalties and surtax imposed by the implementation of this Law and the income tax shall be paid to the Public Treasury through the Ministry of Petroleum Affairs.

The total income to the Ministry of Petroleum Affairs and other Libyan Government, Municipal and other authorities whether central or local in respect of the production, manufacture, dealings in oil or rights thereto, transport, sale, export, shipments, and profits and distribution therefrom of crude oil produced in Libya by the concession holder and or sold by the concession holder for export from Libya shall be equal in respect of such year calculated in accordance with the concession holder's concession agreements, as amended in accordance with this amendment to the Petroleum Law referred to above. In the event any difference or dispute arises concerning this paragraph, such difference or dispute shall be referred to arbitration in accordance with the concession holder's concession agreements.

ARTICLE 16

Exemption from certain Import and Export Duties

(1) A permit or concession holder or any contractor employed by him may import free of duty: —

a) Plant, tools, machinery, equipment, supplies and materials and

b) such other goods as may be specified from time to time by Regulations issued under the Customs Law.

Provided that all the goods mentioned in paragraph (a) or (b) above are used for petroleum exploration, pros-

pecting, mining, transporting, refining operations and activities connected therewith.

Provided, however, that such exemption shall not apply to goods included in this paragraph which are available in Libya of suitable type and reasonably comparable quality and at no higher price provided that in comparing price to the price of imported goods shall be added customs duties and other expenses incurred up to the time the imported goods reach Libya.

(2) Other goods which are dutiable under the Customs Law shall be subject to the payment of the appropriate duty.

(3) Any person intending to sell or transfer any goods which have been imported free of duty under paragraph (1) hereof shall before such sale or transfer make a declaration to the Customs Department and shall, unless such goods are sold or transferred to another permit or concession holder or contractor entitled to the same exemptions, pay on demand such import duty as may be assessed by the Director General of Customs in accordance with the Customs Law.

(4) Petroleum or any of its derivatives produced in Libya, and any goods imported free of duty under paragraph (1) hereof may be exported free of Customs duty and without an export licence subject to the policy of the Government regarding exports in general and to such restrictions as the State may impose by Law on production and exports during a state of war or emergency.

ARTICLE 17

Assignment of Permits and Concessions

Permits and concessions shall not be assigned except with the written consent of the Ministry which may impose any

conditions which it may deem appropriate in the Public interest.

ARTICLE 18

Revocation of Permits and Concessions

A permit or concession granted under this Law may be revoked only in the circumstances and in the manner set out in the permit or concession.

ARTICLE 19

Publication

Notice of the grant, renewal, assignment, revocation, termination or surrender of the whole or any part of any permit or concession shall be published in the Official Gazette.

ARTICLE 20

Arbitration and Force Majeure

(1) Any disputes between the Ministry and the concession holder arising from any concession granted under this Law shall be settled by arbitration in the manner set out in the Second Schedule hereto.

(2) In the event of Force Majeure, the rights and obligations of the parties to a concession granted hereunder shall be those specified in the Second Schedule hereto.

ARTICLE 21

Refining

(1) A concession holder who discovers petroleum in Libya and who desires to refine it in the country shall have the right to construct, maintain and operate a refinery for this purpose in accordance with any legislation governing the refining of petroleum.

(2) Should refineries be established in Libya the Ministry of Petroleum Affairs may require a concession holder to make available at field storage to such refineries, pro rata with other concession holders and at field storage price, sufficient quantities of crude oil from his production in all concessions in Libya to meet the domestic consumption requirements of Libya in respect of petroleum products; provided however that the concession holder shall not be required to furnish or build additional handling or transportation facilities for this purpose.

ARTICLE 22

Penalties

(1) Any person found guilty of exploring for, or prospecting for petroleum in any part of Libya without the authority of a permit or concession issued under this Law shall be liable to a fine not exceeding five hundred Libyan pounds (£L.500). If petroleum has been mined, he shall on conviction be liable to the penalty provided by law for larceny and to a fine of five hundred Libyan pounds (£L.500) or treble the value of any petroleum produced whichever is the greater, and any petroleum mined or produced shall be forfeited to the Government of Libya.

(2) Any person entitled under paragraph (1) of Article 16 to import free of duty the goods referred to therein who intentionally uses such goods for purposes other than those specified therein, or transfers such goods to any person not entitled to exemption contrary to Article 16 paragraph (3), or fails to make the declaration to the Customs Department before the transfer of any goods as required by the said paragraph hereof, shall be liable on conviction to the penalty provided in Article 95 of the Customs Law of 1954.

(3) Any public official or employee who has been entrusted with or who has come to know of any confidential information by virtue of this Law and who divulges such information shall be liable to the penalties provided for in Article 236 of the Penal Code.

(4) In the implementation of this Law, the regulations and decisions made hereunder, the officials appointed by decision of the Minister of Petroleum Affairs shall have the capacity of investigation officials.

(5) The persons mentioned in the previous paragraph shall have the right to enter the premises of the concession holder and inspect his work, books, registers and papers to ensure the proper implementation by the concession holder of the provisions of this Law, the regulations and decisions made hereunder and the provisions of the Permit or Concession.

ARTICLE 23

Definitions

In this Law:

"Minister" means the appropriate Minister;

"permit" means a preliminary reconnaissance permit issued under this Law;

"concession" means a petroleum prospecting, mining and producing concession issued under this Law.

"person" means anybody corporate or other juridical person;

"oil or gas well" means a well capable of producing oil or gas in quantities susceptible of measurement;

"petroleum" means all natural hydrocarbons, liquid or gaseous, produced or producible from the ground and all

asphalt and other solid hydrocarbons suitable for the production of liquid petroleum or gas. Petroleum does not include coal.

"directo control" means the control of any company (hereinafter in this subparagraph called "the particular company") exercised by any other company or companies (hereinafter in this subparagraph called "the parent company or companies") where a series of companies can be specified, beginning with the parent company or companies and ending with the particular company, in which each company of the series, except the parent company or companies, is directly controlled by one or more of the companies in the series;

"year" means a calendar year according to the Gregorian calendar;

"barrel" means forty two (42) gallons U.S. or 158,984 litres of liquid petroleum;

"processing" means any operation connected with the treatment of petroleum with the exception of fractional distrillation.

ARTICLE 24

Regulations

The Minister shall issue the following regulations or any other regulations necessary for the implementation of this Law.

a) Administrative and financial regulations

b) Petroleum regulations for safety precautions and the conservation of the petroleum resources of Libya, provided that no regulations or alternation thereof shall be contrary to the provisions of this Law or adversely affect the contractual rights expressly

granted under any permit or concession in existence at the time the regulation is made or altered.

ARTICLE 25

Title and coming into force

(1) This Law may be cited as the Petroleum Law 1955 and shall come into force thirty days after publication in the Official Gazette with the exception of Articles 2 and 24 which shall come into force on publication.

(2) As from the date on which this Law comes into force the provisions of the Minerals Law 1953 shall cease to apply insofar as they relate to petroleum, except that any permit issued under the Minerals Law 1953 shall continue in force until the normal expiry date.

IDRIS

Given at Dar-Assalaam Palace on 28th Sha'ban 1374 h. corresponding to 21st April 1955 g.

SALEM EL QADI
Minister of National Economy

by order of the King,
MUSTAFA BEN HALIM
Prime Minister

(Published in the Official Gazette No. 4 of 19th June. 1955)

FIRST SCHEDULE
PRELIMINARY RECONNAISSANCE PERMIT FOR PETROLEUM

The Ministry of Petroleum Affairs (hereinafter called "the Ministry") hereby grants the following Permit under the Petroleum Law 1955 to ..... (hereinafter called "the Company") having its Registered Office at .....

1. The Company is authorised to carry out preliminary exploration for petroleum on the following conditions.

2. Preliminary exploration for petroleum includes surface geological reconnaissance, aerial surveys and surface geophysical operations commonly used in the petroleum

industry. The drilling of exploration wells, mechanical core drilling and seismic operations will not be allowed under this permit.

3. The area over which the Company may explore is as follows, and is described in the Annexe to this Permit and is indicated on the attached map.

4. The duration of this Permit is for one year, commencing on the date of signature, and work shall begin as soon as possible after that date. The Company shall notify the Director of Petroleum Affairs (hereinafter referred to as "the Director") in writing of the date of commencement of its activities.

5. Within thirty days after the termination on the said period of one year, the Company shall submit to the Director a report containing a description of the work done. The report shall be in triplicate and accompanied by maps, records and by some rock samples.

6. The discovery of water or valuable minerals shall also be reported to the Director with all available data.

7. All reports will be treated as confidential.

8. The Director or officials of his Department designated by him for this purpose have the right to inspect the activities of the Company.

9. The Permit holder shall not impede in any way the works of any concession holder, or enter into prospecting and development sites without the express permission of the concession holder.

10. Except as provided for in Clause 2 hereof, the issue of this Permit does not confer on the Company any rights or privileges with regard to the prospecting or mining for petroleum.

11. If the Company fails to comply with any of the applicable provisions of the Petroleum Law 1955, or of this Permit, the Permit may be revoked by the Ministry.

12. The Permit shall not be assigned except with the written consent of the Ministry which may impose any conditions which it may deem appropriate in the Public Interest.

13. This Permit is granted on payment of a fee of five hundred Libyan Pounds (£L.500).

For the Company

For the Ministry

Date ..... the Minister

Corresponding with

SECOND SCHEDULE

THE CONCESSION

THIS DEED OF CONCESSION is concluded on the ..... day of ..... 19..... under the Petroleum Law of 1955:

Between

The Ministry of Petroleum Affairs (hereinafter called "the Ministry"), and with the approval of the Minister

and

..... (hereinafter called "the Company") having its registered office at ..... represented by ..... who is legally authorised to act on behalf of the Company by virtue of a Power of Attorney dated ..... which has been produced by him.

CLAUSE 1

Grant of Concession

In consideration of the undertaking by the Company to make the annual payments and pay the fees, rents and royalties hereinafter prescribed and to perform and observe the terms and conditions of this Concession, the Ministry hereby grants to the Company, subject to the conditions hereof and the provisions of the Law, the exclusive right for a period of ..... years to carry out geological investigations, including aerial surveys and to search for by any other means, bore for, and extract petroleum within and over the area outlined in red on the map annexed hereto of approximately ..... square kilometres situated in the ..... zone bounded and defined as follows:

The company shall also have the right to take away such petroleum whether by pipeline or otherwise from the concession area and to use, process, store, export and dispose of the same.

CLAUSE 2

Surrender of Concession Area

In accordance with Article 10 of the Law the Company shall progressively reduce the area of the Concession and shall have the right at any time to surrender the whole or any part of the concession area.

CLAUSE 3

Renewal of Concession

The Concession may be extended for any period such that the total duration shall not exceed 60 years.

If the Company requires a renewal it shall submit to the Ministry an application in writing for such renewal

not more than five years and not less than three years before the end of the term of his concession.

The Ministry shall advise the Company of its decision within one year of the receipt of the application.

CLAUSE 4

Working Obligations

(1) The Company shall, within eight months from the date of the grant of this concession, commence operations to explore for petroleum within the concession area and shall diligently prosecute all its operations under the concession in a workmanlike manner and by appropriate scientific methods. In furtherance thereof the Company shall spend in Libya or elsewhere on, or in connection with, the said operations including general organisational, overhead and administrative expenses connected therewith such sums as may be required in order to comply with the provision of Article 11 of the Law.

(2) Any sum spent during any of the working periods specified in Article 11 of the Law in excess of the minimum sum prescribed for that period shall be carried forward as a credit to the Company against the expenditure requirements for the following period or periods.

CLAUSE 5

Company to follow Good Oil Field Practices

The Company shall carry on all its operations under this Concession in accordance with good oil field practices and so that when petroleum is found it shall be produced in reasonably substantial quantities having regard to the world demand for petroleum and economic exploitation of the petroleum resources of the concession.

CLAUSE 6

Surface Rents

The Company shall in respect of each Concession granted hereunder pay in accordance with Article 13 of the Law and Clause 9 (2) of this concession an annual surface rent per 100 kilometres or pro rata for part thereof of the concession area held as follows: —

(i) (.....)Libyan Pounds for each of the first eight years from the granting of the concession and (.....) Libyan Pounds for each of the next seven years, provided that if any time during this period of fifteen years petroleum is found in commercial quantities the annual rent shall immediately increase to 2500 Libyan Pounds for the remainder of said period and a pro rata proportion of this increased rent shall be payable in respect of the year in which the find occurs.

(ii) 3500 Libyan Pounds for each of the five years commencing from the expiry of the fifteenth year to the expiry of the twentieth year from the date of the granting of the concession.

(iii) 5000 Libyan Pounds a year for the remainder of the concession period.

CLAUSE 7

Royalty

(1) The Company shall pay a royalty of 12½% of the value of the total field production of all natural gasoline recovered by the Company from the concession area and of all petroleum (excluding natural gas) won and saved into field storage freed of water and foreign substances after deduction of the quantities of any petroleum, petroleum

products and natural gasoline used in Libya by the Company in the course of its operations hereunder.

The value of crude oil for royalty purposes shall be calculated on the basis of the posted prices as defined in Article 14 (5) of the Law.

The value of natural gasoline and of petroleum other than crude oil for royalty purposes shall be calculated in a manner to be agreed upon from time to time between the Ministry and the Company.

(2) The Company shall also pay a royalty of 12½% of the sale price less any cost of transport from the Wellhead paid by the Company and not recovered from the purchaser in respect of all natural gas derived from the concession area and sold by the Company for delivery in Libya.

(3) The Company shall also pay a royalty of 12½% of the value of all natural gas derived from the concession area and exported by the Company, the value of the natural gas for this purpose being the sale price after deducting any handling charges, duties and imposts and the cost of transport from the Wellhead paid by the Company and not received from the purchaser.

(4) The Ministry shall be entitled by notice in writing to the Company of not less than three months to take in kind the whole or part of the royalty stipulated in this Clause and due in any complete year. Any petroleum or natural gasoline to which the Ministry becomes entitled by virtue of the exercise of this right shall be delivered by the Company f.o.b. Seaboard Terminal in Libya.

(5) Sums payable under this concession by way of royalty in respect of any year for the concession area shall be reduced by the amounts paid as surface rent in respect of that year under Clause (6) of this concession, provided

that in no case shall the amounts of rent paid be less than £L2500 per 100 square kilometres or pro rata for part thereof.

CLAUSE 8

Taxation and Division of Profits

(1) The Company shall pay such income tax and other taxes and imposts as are payable under the Laws of Libya but shall not be subject to any form of taxation whether Government or Municipal or other exaction of such nature as to render it liable to taxation or other dues not payable by persons in general operating in Libya other than fees, royalties and surface rents make payable under this concession and the Law.

Provided however that:—

(a) If in respect of any complete year from and after the effective date as hereinafter defined the total amount of fees, rents & royalties except 12½% of the value of crude oil exported as herein defined, payable under the Law and income tax and other direct taxes for which the Company is liable in respect of its operations and income therefrom under all petroleum concessions held by it in Libya falls short of 50% of its profits as hereinafter defined for that complete year the Company shall pay to the Ministry such sum by way of surtax as will make the total of its payments equal to 50% of the profits aforesaid.

(b) If in respect of any complete year from and after the effective date the total amount of fees, rents and royalties except 12½% of the value of crude oil exported, as herein defined, payable by the Company under this concession and the Law and income tax and other direct taxes for which the Company is liable as

aforesaid exceeds 50 per cent of the said profits of the Company during that complete year, the Company shall be entitled to deduct such excess from the income tax, surtax and other direct taxes payable in that year or following years.

(c) For purposes of paragraphs (1), (2) and (9) of this Clause, "12½% of the value of crude oil exported" shall mean: 12½% of the value calculated on the basis of the applicable posted prices of crude oil exported by the Company in any such complete year and on which royalty is payable by the Company in that year.

(d) For purposes of this Concession crude oil sold by the Company for export from Libya (which term "for export" as used herein includes export before or after) shall be deemed to be crude oil exported by the Company. With respect to crude oil taken in kind by the Libyan Government under this concession and the Law, being in payment by the Company in whole or in part of the royalty stipulated in this Concession and the Law, such crude oil shall be deemed to be crude oil exported by the Company if such crude oil is delivered to the Libyan Government by the Company for export.

(2) In applying this Clause:

"complete year" means the financial year of the Company. The first year, however, shall include the period from the effective date to the end of the financial year of the Company and the last year shall include the period from the beginning of the financial year of the Company to the termination of this concession.

"effective date" means the date on which the Company first commences regular exports in commercial quantities or regular sales in commercial quantities of petroleum derived from any of its concessions in Libya.

"profits" for the purpose of paragraph (1)(a) and (1)(b) hereof mean in respect of any complete year after the effective date the income resulting to the Company from its operations in Libya after deducting the following items (a) and (b) insofar as they are fairly, properly and necessarily attributable to the operations of the Company in Libya:

(a) Operating expenses and overheads the details of which are defined in Regulations excluding the fees, rents, royalties and income tax and other direct taxes referred to in (1) (a) and (1) (b) above.

(b) Depreciation of all physical assets in Libya at the rate of 10 per centum per annum and amortisations of all other capital expenditure in Libya at the rate of 5 per centum per annum until such assets and expenditure are fully written off. The unamortised balance of the costs of physical assets permanently put out of use may be deducted in the year when such assets are scrapped or sold.

(3) Exploration and prospecting expenses, intangible drilling costs, as defined by Regulations but only to the extent that such expenses and costs are not incidental to the procurement or installation of physical assets, and the costs of drilling wells not productive of petroleum in commercial quantities may in respect of expenditure incurred after the effective date, be deducted in the year in which the expenditure is incurred under paragraph (2) (a) of this Clause or may be capitalised and amortised as provided in

paragraph (2) (b) of this Clause. The Company may either deduct or capitalise each such classification of expenditure. The election one made is final and binding for all time unless the Ministry in special cases agrees otherwise. Expenditures capitalised under this paragraph and attributable to areas surrendered under paragraph (1) of Article 10 of the Law may be deducted in the year of surrender insofar as not already amortised.

(4) Nothing in this Clause shall be taken as permitting the deduction under paragraph (2) (a) or (b) of this Clause of the following items of expense in determining the profits for the purpose of paragraphs (1) (a) and (1) (b) hereof.

i) Penalties paid under Article 22 of the Law or any sum forfeited to the Ministry under Article 11 (3) of the Law.

ii) Foreign taxation paid on income derived from sources within Libya.

iii) Interest or other consideration paid or suffered by the Company in respect of the financing of its operations in Libya.

iv) Expenditures incurred in relation to the organising and initiating of petroleum operations in Libya.

(5) In applying this clause : —

"income resulting from the operations of the Company in Libya" means:

(a) in relation to crude oil exported by the Company from Libya: total gross receipts realized by the Company from such export, and such receipts shall not be less than the amount which results from multiplying the number of barrels of such crude oil exported by the applicable posted

price per barrel of such crude oil exported less the amounts provided for under (i) and (ii) following:

(i) a marketing allowance equal to one-half (½) U.S. cent per barrel of such crude oil exported multiplied by the number of barrels of such crude oil exported. Such marketing allowance to be limited to this extent.

(ii) an allowance per barrel of such crude oil exported (hereinafter called "the allowance") which shall be applied to each quality and gravity of all crude oil exported and the maximum rate of which shall be those specified below. The allowance applicable to any quality and gravity of crude oil exported may be changed from time to time by the Company to whatever rate it elects upon giving to the Ministry of Petroleum Affairs notice in writing of such change provided that the rate so elected shall at no time exceed the applicable rate specified below. A rate so notified shall remain in effect until a further notice of change is given to the Ministry of Petroleum Affairs.

(1) The maximum rates of the allowance elected by the Company pursuant to the provisions of the Company pursuant to the provisions of the immediately preceding paragraph shall be such that:

(a) for the year 1965 the maximum monetary amount of the allowance for each quality and gravity of crude oil exported shall be equal to 7½ per cent of the applicable crude oil posted price, plus U.S. $0.0013235 per barrel for each full degree of API gravity by which such crude oil exceeds 27° API gravity.

(b) for the year 1966 the maximum monetary amount of the allowance for each quality and

gravity of crude oil exported shall be equal to, and for the years after 1966 shall not be greater than 6½ per cent of the applicable crude oil posted price plus U.S. $0.0026470 per barrel for each full degree of API gravity by which such crude oil exceeds 27° API gravity, provided, however, that if this Concession were granted after 1966 such amount shall be that agreed upon by the parties hereto at the time of the grant hereof.

(2) (a) Any reduction in the rate of the allowance applicable to each quality and gravity of crude oil exported by the Company in respect of a year or years after 1966 shall be made in the light of the competitive, economic and market situation of the quality and gravity of such Libyan crude oil exported which is expected at the time of such reduction to prevail during the then reasonable foreseeable future as compared with the competitive, economic and market situation of crude oil of such quality and gravity which was exported from Libya in the year this Concession was granted, or, in the event no crude oil of such quality and gravity was so exported in such year, then as compared with the competitive, economic and market situation in such year of Libyan crude oil exports generally, and the Company agrees that the allowance shall be eliminated at the time and in the event that its elimination is justified by changes from the competitive, economic and market situation in the year this concession was granted. Subject to the conditions stated in subparagraph (b) of this subparagraph (2), the rate of the allowance applicable to crude oil of any such quality and gravity shall not be changed by the Company

after a change is made to a rate greater than the rate of the allowance applicable to crude oil of such quality and gravity immediately prior to such change.

(b) The condition referred to in subparagraph (a) of this subparagraph (2) is that, if the Company has reduced the rate of the allowance applicable to any quality and gravity of crude oil as a result of circumstances which in its judgment are extraordinary and provided that when making such reductions the Company in notifying the Ministry of Petroleum Affairs of such reductions has referred to this condition, the Company may when such extraordinary circumstances have in its judgment ceased to exist and notwithstanding any other provision of the subparagraph (ii) of this subparagraph (a), increase the rate of the allowance applicable to crude oil of such quality and gravity to a rate not greater than that existing immediately prior to such reductions.

(3) If and when a change is requested by the Ministry of Petroleum Affairs in the rate of the allowance applicable in respect of a year or years after 1966 to any quality and gravity of crude oil exported by the Company, the Company in notifying the Ministry of Petroleum Affairs and consider such data and views put forward by the Ministry of Petroleum Affairs as are relevant to the comparison referred to below in this subparagraph (3) and the Company shall then notify the Ministry of Petroleum Affairs of its determination as to the change required if any in the light of the competitive, economic and market situation of crude oil of

such quality and gravity which is expected to prevail during such year or years as compared with the competitive, economic and market situation of crude oil of such quality and gravity which was exported from Libya in the year this concession was granted, or, in the event no crude oil of such quality and gravity was so exported in such year, then as compared with the competitive, economic and market situation in such year of Libyan crude oil exports generally.

(4) If the Company holds a petroleum concession granted before the coming into force and effect of the Decree Law by which the language of the subparagraph (4) was incorporated into Schedule II to the Law, and such concession was amended in accordance with the conditions and provisions of the Law as last amended by such Decree Law, all references to the term "year this Concession was granted" appearing in subparagraphs (2) and (3) above shall be deemed to mean the year in which such concession was thus amended.

(b) In relation to other operations of the Company in Libya the income to be ascertained in a manner to be agreed between the Company and the Ministry. The value of petroleum or natural gasoline taken in kind under Article 13 of the Law shall be deemed to be part of such income.

"Posted price" means the price f.o.b. Seaboard Terminal for Libyan crude oil of the graving and quality concerned arrived at by reference to free market prices for individual commercial sales of full cargoes and in accordance with the procedure to be agreed between the Company and the Ministry or if there is no free market for commercial sales

of full cargoes of Libyan crude oil then posted price shall mean a fair price fixed by agreement between the Company and the Ministry or in default of agreement by arbitration having regard to the posted prices of crude oil of similar quality and gravity in other free markets with necessary adjustments for freight and insurance.

(6) Where in respect of any complete year after the effective date the total of the deductions allowed under paragraph (2) of this Clause for the determination of profits exceeds the income in respect of that year before taking the said deductions the resulting excess shall be carried forward and as far as may be deducted from the profits of subsequent complete years up to a maximum of 10 years.

(7) If the Company participates in joint operations in connection with this concession it may, in respect of such operations, report its rateable proportion of income therefrom and permitted expenses therein and make all permitted elections independently of the other person or persons participating in the joint operations, provided that one or more of the persons in the joint operations is carrying out other independent operations in Libya under this Law. Income & permitted expenses so reported may be consolidated with those in respect of other operations being carried out by it in Libya under the Law.

(8) In computing profits as herein defined sound and consistent accounting practices usual in the petroleum industry shall be employed. Where more than one such accounting practice prevails the Ministry shall decide which practice is to be applied by the Company.

(9) As soon as practicable after the end of each complete year referred to above and in any event not later than four months after the end of each complete year the

Company shall submit to the Ministry accounts showing that year's profits as defined in this Clause. Simultaneously with the submission of the accounts the Company shall pay to the Ministry a sum which together with any fees, rents, royalties and direct taxes already paid for the year equals 50% of the profits shown by the said accounts. This payment shall be treated by the Ministry as a payment on account of income tax and surtax.

If when the actual amounts of income tax and surtax payable have been finally determined the payment on account is less than the total of the income and surtax payable the Company shall pay the balance forthwith. If when the actual amount of income tax and surtax payable has been finally determined the payment on account is more than the total of the income tax and surtax payable the balance shall be carried forward and treated as a payment on account of future income tax and surtax.

(10) The Ministry of Petroleum Affairs shall have the right to purchase up to the maximum amount specified below, crude oil from the Company at the Seaboard Terminal in Libya where the Company normally terminals and from where it usually ships such crude oil, for delivery on board ship at such Seaboard Terminal at the following purchase price: the posted price per barrel at such Seaboard Terminal applicable to the quality and gravity of the crude oil so purchased and in effect on the date of commencement of each such delivery less (1) a marketing allowance equal to one-half (½) U.S. cent per barrel of the crude oil so purchased, and less (2) the applicable allowance per barrel of the crude oil so purchased referred to in paragraph (5) (a) (ii) of this Clause in effect on the date of commencement of each such delivery.

The Maximum amount of such crude oil which the Ministry of Petroleum Affairs shall have the right to purchase in any calendar year from the Company shall be the difference between:

(1) The volume of such crude oil the value of which at the purchase price specified above equals: 12½% of the value calculated on the basis of the applicable posted price of crude oil exported by the Company in that year of the gravity and quality purchased by the Ministry of Petroleum Affairs and on which royalty is payable by the Company in such year less 12½% of the value calculated on the basis of the applicable posted prices of the crude oil so purchased by the Ministry of Petroleum Affairs.

and

(2) the volume of crude oil taken by the Ministry of Petroleum Affairs in that year as royalty in kind under all the Company's concessions in Libya.

One hundred and twenty (120) days prior to the commencement of each calendar year in which the Ministry of Petroleum Affairs wishes to exercise its right to purchase crude oil from the Company as specified above, the Ministry of Petroleum Affairs shall notify the Company in writing of the quantity, quality and gravity of such crude oil the Ministry of Petroleum Affairs shall purchase in such year. Liftings shall be spread evenly over each calendar quarter, and forty five (45) days notice of arrival of tankers nominated by the Ministry of Petroleum Affairs for such liftings shall be given to the Company by the Ministry of Petroleum Affairs. Liftings at each Seaboard Terminal, if there be more than one, shall be proportionately of the same quantity, quality and gravity as the total quantity of the crude

oil delivered f.o.b. at such Seaboard Terminal by the Company during such quarter.

The Ministry of Petroleum Affairs shall pay to the Company for such crude oil so purchased the amount of the purchase price in the currency of the Company's country of origin or in Libyan pounds freely convertible at payment to such amount in such currency, such payment to be made within thirty (30) days after the end of the calendar month in which deliveries of such crude oil so purchased commenced. In the event payment is not made as specified above the Company shall have the right to set off against any sums payable to the Ministry of Petroleum Affairs by the Company under the Law and the Company's concession agreements such past due payments, and, in addition, to suspend further deliveries hereunder until such payment is made by the Ministry of Petroleum Affairs or the obligation therefor is fully discharged by such setoff. The Company shall be deemed to have paid to the Ministry of Petroleum Affairs such sums to the extent of such setoff.

CLAUSE (9)

Method of Making Payments

(1) The fees, surface rents, royalties and surtaxes payable hereunder and income taxes shall be paid by the Company to the Ministry. The collection of such sums shall be subject to the procedure provided by the Financial Law and Regulations of Libya.

CLAUSE 9

Method of Making Payments

(1) All fees, surface rents, royalties, and surtaxes imposed by the application of the Law, and income taxes shall be paid to the Public Treasury through the Ministry

of Petroleum Affairs. The collection of such sums shall be subject to the procedure provided by the Financial Laws and Regulations of Libya.

(2) The Company shall pay the surface rents specified in Clause 6 hereof annually in advance until such time as royalty becomes payable by the Company under Clause 7 hereof. Thereafter surface rents and royalties shall be calculated in respect of each quarter and shall be paid by the Company to the Ministry within 60 days after the last day of the quarter. Sums payable by way of royalty under Clause 7 of this concession in respect of any year for a concession area shall be reduced by the amounts paid as surface rent under Clause 6 of this concession in respect of that year, provided that in no case shall the amount of rent paid be less than 2500 Libyan pounds annually per 100 square kilometres or pro rata for part thereof.

(3) The total income to the Ministry of Petroleum Affairs and other Libyan Government, Municipal and other authorities whether central or local in respect of the production, manufacture, dealings in oil or rights thereto, transport, sale, export, shipments and profits and distribution therefrom of crude oil produced in Libya by the Company and or sold by the Company for export from Libya shall be equal in respect of any complete year to the amount which the Libyan Government would have been entitled to receive in respect of such year calculated in accordance with the Company's concession agreements, as amended by this decree, wherein this paragraph has been incorporated into the Concession Agreements. In the event any difference or dispute arises concerning this paragraph, such difference or dispute shall be referred to arbitration in accordance with Clause 28 below.

(4) If the Company holds a petroleum concession granted before the coming into force and effect of the Decree Law

by which the language of this paragraph (4) was incorporated into Schedule II to the Law, and such concession was amended in accordance with the conditions and provisions of the Law as last amended by such Decree Law, the conditions and provisions of paragraph (4) of Clause 9 of such concession as thus amended are hereby incorporated herein by reference and made an integral part hereof, with the same force and effect as if set forth in full herein.

CLAUSE 10

Exemption from certain import and export duties

(1) The Company or any contractor employed by the Company may import free of duty: —

a) Plant, tools, machinery, equipment and materials and

b) such other goods as may be specified from time to time by Regulations issued under the Customs Law.

Provided that all the goods mentioned in paragraph (a) or (b) above are used for petroleum exploration, prospecting, mining, transporting, refining operations and activities connected therewith.

Provided, however, that such exemption shall not apply to any goods included in this paragraph which are available in Libya of suitable and reasonable comparable quality, and at no higher price, provided that in comparing prices to the price of the imported goods shall be added Customs duties and other expenses incurred up to the time the imported goods reach Libya.

(2) Other goods which are dutiable under the Customs Law shall be subject to the payment of the appropriate duty.

(3) If the Company or any contractor, as the case may be, intends to sell or transfer any goods which have been imported free of duty under paragraph (1) hereof, a declaration shall be made to the Department of Customs before such sale or transfer is effected and, unless such goods are sold or transferred to another company or contractor entitled to the same exemptions, such import duty shall be paid as may be assessed by the Director General of Customs in accordance with the Customs Law.

(4) Petroleum or any of its derivatives produced in Libya, and any goods imported free of duty under paragraph (1) hereof may be exported free of Customs duty and without an export license subject to the policy of the Government regarding exports in general and to such restrictions as the state may impose by Law on production and exports during a state of war or emergency.

CLAUSE 11

Exchange Control

The Company shall be subject to the normal exchange control applicable in Libya provided however that:

(a) the Company shall be entitled to retain abroad all funds acquired by it abroad including the proceeds of sales insofar as such funds may exceed the Company's requirements for the purposes of its operations in Libya, but statements of foreign exchange holdings or proceeds of sales of Libyan Petroleum shall be rendered to the Libyan National Bank in such form and at such periods as it may require;

(b) the Company shall be entitled to remit any funds held by it in Libya in excess of its requirements in Libya in the primary currency in which the Company's

investment in operations under this concession was made, to the country from which the primary currency originated;

(c) the Company shall be entitled to buy and sell solely for the purpose of its own operations in Libya and remittances under paragraph (b) above any currency whether Libyan or otherwise at the most favorable rate of exchange available through authorised banking channels to any other buyer or seller in Libya of such currency;

(d) no restriction shall be placed on the importation of funds by the Company for the purpose of carrying out its operations under this concession.

CLAUSE 12

Ancillary Rights

For the purpose of its operations under this concession the Company shall have the following rights in the concession area:

a) with the approval of the Director, to drill for water and impound surface waters and to establish systems for the supply of water for its operations and for consumption by its employees;

b) with the approval of the Director to carry away and use in Libya materials such as gravel, sands, lime, gypsum, stone and clay which shall be free of charge in the case of such materials taken from land other than private lands;

c) to erect, set up, maintain and operate houses, fences, engines, machinery, furnaces, buildings, pipelines, storage tanks, compressor stations, pumping sta-

tions, processing plant, field road and all other constructions, installations and works required in furtherance of its activities. The Company may likewise for such purposes, erect, set up, maintain and operate all other communication and transportation systems and facilities but shall not do so, other than for temporary purposes, unless drawings of and locations for their sites have been submitted to and approved by the Director.

CLAUSE 13

Transport Rights

The Company shall have the right for the purpose of its operations to erect and operate a harbour and terminal facilities together with the necessary means of communication and transport between such facilities and any part of the concession area, provided that the consent of the appropriate authorities to the location of such works shall be obtained. Such consent shall not be unreasonably withheld or delayed. The Company shall likewise have the right under similar conditions to build and maintain pipelines elsewhere outside the concession area for the transport of petroleum produced under this concession. In exercising such right the Company may occupy land in accordance with the provisions of Clause 14 hereof and erect and maintain thereon any communication and transportation systems and facilities and other fixtures which it requires for the installation, servicing, maintenance and operation of such pipelines.

CLAUSE 14

Right to occupy land

(1) The Company shall have the right to enter and occupy free of charge for the purpose of its operations

under this concession any land within the concession area other than private land, provided it is not then in the lawful occupation of some person.

(2) If the Company fails to agree with a private landowner or lawful occupier of other than private land as to the terms on which it may enter and occupy the land in question the Company shall immediately notify the Director. If the occupation is to be of a temporary nature, not exceeding one year, the Director shall authorise such temporary occupation upon deposit by the Company with the Ministry of a sum by way of reasonable compensation to such landowner and or lawful occupier for less of use of and damage to the interest in the land as the Director shall determine. If the occupation is to be for longer period than one year the Ministry shall authorise occupation by the Company of the land in question upon deposit by the Company with the Ministry of such sum by way of reasonable compensation as the Ministry shall determine and the Ministry shall direct appropriate proceedings to be taken to put the Company into possession of the land under the law from time to time in force, as if the Company's operations were in all respects a work of public utility. In the event of any dispute as to the nature and extent of the interests or claimants to the land or the amount of compensation payable by the Company, the Ministry shall refer the dispute for determination by an appropriate court of Law and the Ministry shall pay to the respective claimants such sum by way of compensation as may have been determined by the Court. The Ministry shall pay to or obtain from the Company (as the case may be) the amount by which the sum deposited by the Company exceeds or falls short of the total compensation payable to the claimants.

(3) This concession shall not confer upon the Company the right to do any work within the precincts of cemeteries,

places used for religious worship and places of antiquity as defined in the Antiquity Laws from time to time in force. Any works of art or antiquity discovered by the Company shall be subject to the law from time to time in force.

(4) No drilling or any dangerous operations can be conducted within 50 meters of any public works or permanent building without the previous consent of the Director, and subject to such conditions as he may impose.

CLAUSE 15

Company's Labour

Subject to the provision of any Immigration Law in force at the time, the Company is hereby allowed to bring into the country such employees as may be necessary for its operations and the competent authorities shall facilitate the entry into exist from and movement within Libya of such employees and their dependents while such employees are engaged on the Company's operations hereunder. The Company shall have the right so to arrange its labour shifts that all operations may proceed by day and by night and during public holidays.

CLAUSE 16

Company's Rights Ensured

(1) The Government of Libya will take all steps necessary to ensure that the Company enjoys all the rights conferred by this Concession. The contractual rights expressly created by this concession shall not be altered except by mutual consent of the parties.

(2) This Concession shall throughout the period of its validity be construed in accordance with the Petroleum Law and the Regulations in force at the time of granting

the Concession. Any amendment to or repeal of these regulations shall not affect the contractual rights of the Company without its consent.

CLAUSE 17

Saving for Rights of Government and Others

Nothing in this concession shall be deemed to limit the right to grant concessions in respect of minerals other than petroleum in the concession area, or generally to limit the rights of the Government or any authority or person in the concession area, save as expressly provided herein; provided always that the Company's operations hereunder are not thereby interfered with nor its rights hereunder prejudiced. The Company shall not obstruct the exercise of any such right, but shall afford the holder thereof and of any concession holder as aforesaid, every reasonable facility for the exercise of their rights.

CLAUSE 18

Employment and Training of Libyan Subjects

(1) Provided that the requisite number have adequate skill and ability is available, the minimum number of Libyan subjects employed by the Company in Libya after 10 years from the date of commencement of operations shall have reached at least 75% of the total number of persons employed by the Company in Libya.

(2) The Company shall as from the date of commencement of regular exports from Libya of petroleum in commercial quantities produced in the concession area make an annual payment to the Libyan Government of not less than £L.2,500 and not more than £L.5,000 which payment shall be applied towards giving Libyan subjects such technical training as may be agreed upon by the Director and the

Company, in order to fit them for employment in the petroleum industry or in related undertaking, provided however that the Company may each year reduce such payments by the amount which during that year it expended for the training and education of Libyan subjects for such purpose in Libya or abroad.

CLAUSE 19

Water Disposal

Plugging of Boreholes and Wells

The Company shall, in accordance with good oil field practices, provide an adequate system for the disposal of its water and waste oil, and shall securely plug all boreholes and wells made by it before they are abandoned.

CLAUSE 20

Reports to be furnished

(1) The Company shall at its own expense furnish to the Director during the first quarter of each year a report of the progress of its operations in the concession area during the preceding year. This report shall contain:

(a) a statement of the number of bore-holes and wells drilled, including bore-holes and wells drilled in search of water, and of the depth of each, with a plan showing their location if the Director so requires;

(b) a statement of any petroleum, water or valuable minerals encountered during the course of the Company's operations;

(c) a statement of all petroleum produced, of gas sold, and of natural gasoline recovered;

(d) a statement of the amount of water produced with the oil and natural gas;

(e) the nature and extent of geological and geophysical surveys carried out;

(f) a general survey of the operations; and

(g) a statement showing the number of Libyan subjects and nationals of other countries employed by the Company in Libya.

(2) The Company shall furnish to the Director not less than 30 days before the end of each year a statement of the general programme it intends to carry out during the following year.

(3) The Company shall keep accurate financial records of its operations under this concession which records shall be open to inspection by the appropriate authorities.

(4) The Company shall furnish such further information relating to its operations in the concession area as the Director shall reasonably require.

(5) The Company shall keep accurate geological and geophysical plans, maps and records relating to the lands within the concession area.

(6) On the discovery of oil or gas, the Director shall immediately be informed of such discovery.

(7) All information furnished by the Company under this clause shall (except with the consent in writing of the Company) be treated as confidential.

CLAUSE 21

Inspection

The officials appointed by decision of the Minister of Petroleum Affairs shall have the right to enter the premises of the Company and inspect its work, book, register and

papers to insure the proper implementation by the Company of the provisions of the Law, the regulations and the decisions issued for its implementation and the provisions of this concession.

CLAUSE 22

Measurement of Petroleum

The Company shall measure and record by methods customary in good oil field practice all petroleum and natural gasoline produced and saved by the Company within the concession area as if freed of water and other foreign substances. The Director or any official designated by him shall be entitled to attend such measuring and to examine and test the accuracy of the appliances employed therein and to examine the records thereof. The Company shall assist such official in the performance of his duties under this Clause. If any such measuring appliance shall at any time discovered to be inaccurate, the same shall, if the Director so decides, be deemed to have existed in the condition for a period of 90 days prior to the discovery of such inaccuracy, or for the period elapsed since the last occasion upon which the same was examined or tested, whichever shall be the less, and the Company's records shall be adjusted accordingly.

CLAUSE 23

Address of Local Manager

The Company shall before commencing operations furnish to the Director the name and address of the Manager of the Company's operations under this concession. Any notice required to be served on the Company shall be sufficiently served if delivered at, or sent by registered post to, the Manager at such address.

CLAUSE 24

Force Majeure

Failure by the Company to carry out any of the provisions of this Concession shall not give rise to any claim or be deemed to be a breach of this Concession, if it be shown that the failure has arisen from force majeure, namely Acts of God, insurrection, riots, war, strikes of workmen, or any other unforeseen circumstances beyond the control of the Company. If by reason of force majeure the fulfilment by the Company of any of the terms and conditions of this Concession or the enjoyment of its rights under the Concession is delayed the period of such delay shall be added to the period fixed herein for such fulfillment or enjoyment.

CLAUSE 25

Assignment

The Company is not permitted to assign this concession except with the written consent of the Ministry which may impose any conditions which it may deem appropriate in the public interest.

CLAUSE 26

Right to Remove Property

On the surrender of any area & on the expiration or earlier determination of this concession, the Company shall, except as hereafter in this clause provided, be entitled to remove all its property of whatever nature situated within the surrendered area or the concession area as the case may be. Well casings and well heads may not however be removed unless adequate protective measures are taken to the satisfaction of the Director. Fixtures necessary to control the flow of gas or liquid from the well head may not

be removed without the approval of the Director. No taxes, duties or charges whatsoever other than any specifically made payable hereunder, shall be imposed in connection with such removal. The Director, may, however, within a period of 30 days following any surrender or expiration or earlier determination, elect to purchase any property which theretofore was used by the Company solely and exclusively in connection with its operations within the surrendered area or the concession area. Such purchases will be made at a fair price to be determined by agreement between the Director and the Company. Failing such agreement the matter shall be referred to an independent expert or panel of experts as may be agreed between the Director and the Company. Such panel shall consist of one member to be appointed by the Company, another member to be appointed by the Director and a third member to be chosen by the two members appointed. The expert or panel, as the case may be, shall determine what, in the circumstances, is a fair price for the property. The wells, and well casings, well heads and fixtures not removed as aforesaid shall be handed over to the Director free of charge within 30 days following the surrender or expiration or earlier determination. The Director may require the Company to restore the surface of the land to a reasonable condition in accordance with good oil field practice, taking into account normal wear and tear caused by the Company's operations thereon.

CLAUSE 27

Revocation

(1) The Ministry may, by notice in writing to the Company, revoke this Concession in the following circumstances but not otherwise:

(a) the Company fails to commence operations within 8 months as required by Clause 4 or fails to meet

its expenditure obligations within each of two consecutive periods specified in Article 11(1)(a) and (b) of the Law, or

(b) any surface rents or royalties payable under this concession are in arrears for six months after the date on which they ought to have been paid in accordance with Clause 6 and Clause 7, or

(c) the Company goes into liquidation except voluntarily for the purpose of reconstruction or amalgamation, or a receiver is appointed, or

(d) the Company fails to perform its obligations under Clause 2 or Clause 25, or

(e) any sum awarded against the Company in arbitration proceedings under the following clause has not been paid within 90 days of the date stipulated in the award, provided that the Ministry shall give to the Company previous notice in writing of the breach and require the Company to remedy the breach and pay compensation where appropriate within the period fixed by the Ministry which shall not be less than 90 days; notice of revocation shall only be given if the Company has failed within the specified period to remedy the breach and pay compensation where appropriate.

(2) Whenever the Company disputes the grounds upon which revocation may be based and requests arbitration under Clause 28 hereof, the revocation shall only become effective subject to and in accordance with the result of the arbitration.

(3) Revocation shall be without prejudice to any liability incurred by the Company before revocation.

CLAUSE 28

Arbitration

(1) If at any time during or after the currency of this Concession any difference or dispute shall arise between the Government and the Company concerning the interpretation or performance hereof, or anything herein contained or in connection herewith, or the rights and liabilities of either of such parties hereunder and if such parties should fail to settle such difference or dispute by agreement, the same shall, failing any agreement to settle it any other way, be referred to two Arbitrators, one of whom shall be appointed by each party, and an Umpire who shall be appointed by the Arbitrators immediately after they are themselves appointed.

In the event of the Arbitrators failing to agree upon an Umpire within 60 days from the date of the appointment of the second Arbitrator, either of such parties may request the President or, if the President is a national of Libya or of the Country where the Company was incorporated, the Vice-President, of the International Court of Justice to appoint the Umpire.

(2) The institution of Arbitration proceedings shall take place upon the receipt by one of such parties of a written request for Arbitration from the other which request shall specify the matter in respect of which Arbitration is required and name the Arbitrator appointed by the party requiring Arbitration.

(3) The party receiving the request shall within 90 days of such receipt appoint its Arbitrator and notify this appointment to the other of such parties failing which such other party may request the President or, in the case referred to in paragraph (1) above, the Vice-President, of

the International Court of Justice to appoint a Sole Arbitrator and the decision of a Sole Arbitrator so appointed shall be binding upon both such parties.

(4) If the Arbitrators appointed by such parties fail to agree upon a decision within 6 months of the institution of Arbitration proceedings or any such Arbitrator becomes unable or unwilling to perform his functions at any time within such period, the Umpire shall then enter upon the Arbitration. The decision of the Arbitrators, or in case of a difference of opinion between them, the decision of the Umpire, shall be final. If the Umpire or the Sole Arbitrator, as the case may be, is unable or unwilling to enter upon or complete the Arbitration, then, unless such parties otherwise agree, a substitute will be appointed at the request of either such party by the President, or, in the case referred to in paragraph (10) above, the Vice-President, of the International Court of Justice.

(5) The Umpire however appointed or the Sole Arbitrator shall not be either a national of Libya or of the Country in which the Company or any Company which directly or indirectly controls it was incorporated nor shall he be or have been in the employ of either of such parties or of the Government of Libya or of any such Country as aforesaid. The Arbitrators, or, in the event they fail to agree within 60 days from the date of appointment of the second Arbitrator, then the Umpire, or, in the event a Sole Arbitrator is appointed, then the Sole Arbitrator, shall determine the applicability of this Clause and the procedure to be followed in the Arbitration.

In giving a decision the Arbitrators, the Umpire or the Sole Arbitrator, as the case may be, shall specify an adequate period of time during which the party to the difference or dispute against whom the decision is given shall

conform to the decision, and such party shall not be in default if that party has conformed to the decision prior to the expiry of that period.

(6) The place of Arbitration shall be such as may be agreed by such parties and in default of agreement between them within 120 days from the date of institution of Arbitration proceedings as specified in paragraph (2) above, shall be determined by the Arbitrators or, in the event the Arbitrators fail to agree within 60 days from the date of appointment of the second Arbitrator, then by the Umpire, or in the event a Sole Arbitrator is appointed, then by the Sole Arbitrator.

(7) This concession shall be governed by and interpreted in accordance with the principles of law of Libya common to the principles of international law and in the absence of such common principles then by and in accordance with the general principles of law, including such of those principles as may have been applied by international tribunals.

(8) The costs of the Arbitration shall be borne by such parties in such proportion and manner as may be provided in the decision.

CLAUSE 29

Interpretation

(1) Words defined in the text of the Petroleum Law 1955 shall have the same meaning in this Concession.

(2) In this Concession:

"the Law" means the Petroleum Law of 1955;
"the Director" means the Director of Petroleum Affairs;
"land" means territory under the control and jurisdiction

of the United Kingdom of Libya and includes marshes, ground underlying lakes or rivers and the seabed and subsoil beneath territorial waters and the high seas contiguous thereto;

"concession area" means the area over which for the time being the Company enjoys the rights conferred upon it hereunder;

"crude oil" means any unrefined oil consisting primarily of hydrocarbons;

"natural gasoline" means any liquid hydrocarbon obtained from natural gas by any chemical or physical process;

"natural gas" means any subsoil gas consisting primarily of hydrocarbons;

''quarter'' means a three month period of a year beginning on January 1st, 1st April, 1st July or 1st October, as the case may be.

CLAUSE 30

Fees

This concession is granted on payment of a fee of £L ( ).

Signed .....
For the Ministry

Signed .....
The Minister

Signed .....
For the Company
Company's Seal

Date .....
Corresponding to .....

The amendments effected on the Libyan Petroleum Law

during the last five years included certain provisions which are considered as annexed to the law's original text.

The said provisions are shown hereunder in the manner as stipulated in the various amendments to the law.

The following two Articles were added in the Petroleum Law by Royal Decree issued on 3rd July 1961:

Article V

(1) During a period of six months from the date on which this Law comes into force, concession holders who were granted concessions under this Petroleum Law 1955 may apply to the Commission to amend their concessions in accordance with the conditions and provisions of that Law as amended by this Law. The Commission shall grant any such application and shall extend the period of any concession thus amended by a period equal to that from the date on which the original concession was granted to the date on which this Law takes effect.

(2) No concession shall be granted to a person who holds a concession before the coming into force of this Law unless that person agrees in writing to amend that concession in accordance with the conditions and provisions of this Law.

No concession shall be granted to a person who directly or indirectly controls or is directly or indirectly controlled by a person who holds a concession granted before the coming into force of this Law unless the holder of that concession agrees in writing to amend it in accordance with the terms and provisions of this Law.

(3) In implementing paragraphs (1) and (2) of this Article it is not permitted to amend any of the obligations and undertakings given by concession holders in accordance

with the Agreements concluded between the Commission and these concession holders and the letters exchanged between the two parties and which are annexed to the Concession Deeds granted to these concession holders so as to take away or reduce the rights, benefits and privileges of the Commission below those provided in this Law.

Article VI

The Ministry of Petroleum Affairs shall market and sell any petroleum elects to take in kind in accordance with paragraph (2) of Article (13) of this (Petroleum) Law and in accordance with the conditions approved by the Council of Ministers.

And according to the Royal Decree of 9 Nov. 1961 two more Articles were added to the Law which read as follows:

Article V, bis

In the event of a concession holder agreeing to amend his concession under Article V of this Decree he may surrender the areas, which he is required to surrender in that concession, in accordance with the conditions set out in Article 10 of the Petroleum Law No. 25 of 1955 before its amendment by this Royal Decree.

ARTICLE V, bis (a)

In the event of a concession being amended in accordance with Article V of this Decree, Clause 16 of the Concession shall be amended as follows:

(1) The Government of Libya, will take all steps necessary to ensure that the Company enjoys all the rights conferred by this Concession. The contractual rights expressly created by this Concession shall not be altered except by mutual consent of the parties.

(2) This Concession shall, throughout the period of its

validity, be construed in accordance with the Petroleum Law and the Regulations in force at the time of amending the Concession. Any amendment to or repeal of these Regulations shall not affect the contractual rights of the Company without its consent.

By Law No. 6 of 1963, the following Article was also added to the Law:

ARTICLE 7

The Petroleum Commission is cancelled and all its funds will go to the Public Treasury and the Ministry of Petroleum Affairs will replace the Commission in all permits and concessions granted in accordance with the provisions of Law No. 25 of 1955. The Ministry will also replace the Commission in all its other rights and liabilities and all the employees of the Cancelled Petroleum Commission will be considered as transferred to the Ministry of Petroleum Affairs with their grades and salaries on the date of the implementation of this Law.

And lastly the following two Articles were added by the Royal Decree of Nov. 20, 1965.

ARTICLE XI

1. No new petroleum concession shall be granted to a person who holds a petroleum concession granted before the coming into force and effect of this Decree Law unless that person undertakes in writing, in conformance with Article XII hereof, executed and delivered to the Ministry of Petroleum Affairs, the obligation to amend such previously granted concession in accordance with the conditions and provisions of the Petroleum Law No. 25 of 1955 as heretofore and hereby amended.

2. No new petroleum concession shall be granted to (i) a person who directly or indirectly controls a concession holder who holds a petroleum concession granted before the coming into force and effect of this Decree Law or (ii) to a person directly or indirectly controlled by a person who either holds a petroleum concession granted before coming into force and effect of this Decree Law or (iii) to a person who directly or indirectly controls such a concession holder, unless the holder of such previously granted concession undertakes in writing, in conformance with Article XII hereof, executed and delivered to the Ministry of Petroleum Affairs, the obligation to amend such concession in accordance with the conditions and provisions of the Petroleum Law No. 25 of 1955 as heretofore and hereby amended.

3. In implementing paragraphs (1) and (2) of this Article it is not permitted to amend any of the obligations and undertakings given by concession holders in accordance with the Agreements concluded between the Petroleum Commission, which was instituted by the original text of Article 2 of the Petroleum Law No. 25 of 1955, or the Minister of Petroleum Affairs, and these concession holders and the letters exchanged between such two parties and which are annexed to the Concession Deeds granted to these concession holders, so as to reduce the rights, benefits and previleges of the Government of Libya provided for in the Petroleum Law No. 25 of 1955 as heretofore and hereby amended.

4. For the purpose of the provisions of Article XI and XII hereof, a person who holds a part interest in a petroleum concession granted before coming into force and effect of this Decree law shall be deemed to be a concession holder who holds a petroleum concession granted prior to such date. Such person may amend his part interest in

that concession in accordance with the conditions and provisions and in the manner specified in said Articles XI and XII hereof, independently of the holders of the remaining interests in that concession.

5. A concession holder who holds more than one petroleum concession granted before the coming into force and effect of this Decree Law and who wishes to amend one or more such concession in accordance with the provisions of Article XI and XII hereof, must amend simultaneously all such concessions that he holds.

6. During a period of 45 days from the date on which this Decree Law comes into force and effect by publication in the Official Gazette of the Kingdom of Libya, applicants for new petroleum concessions whose applications were opened on 31, July, 1965 may by notice given in writing to the Minister of Petroleum Affairs either affirm their intention to maintain their applications in force and effect unaltered or delete therefrom any provisions thereof or add thereto any more favourable terms.

Thereupon such applications shall be deemed to be applications for concession agreements only in accordance with the Petroleum Law No. 25 of 1955 as heretofore and hereby amended & only in accordance with Schedule 11 thereto & only in accordance with the Regulations in force and effect on the date of delivery of the above mentioned notice. If such notice is not given by such an applicant within such 45 day period with respect to all his applications for such new concessions, every one of his applications for such new concessions shall be deemed to have been withdrawn and to be of no further force and effect.

7. No fees shall be charged to concession holders or applicants for new petroleum concessions in implementing the provisions of Article XI and XII hereof.

ARTICLE XII

The Ministry of Petroleum Affairs shall accept from a concession holder of a concession agreement who holds a petroleum concession granted before the coming into force and effect of this Decree Law, a written undertaking to amend such concession agreement in accordance with the conditions and provisions of the Petroleum Law No. 25 of 1955 as heretofore and hereby amended. Such undertaking may be conditional upon the Petroleum Law and the Regulations applicable to such concession holder submitting such undertaking and in force and effect at the date such agreement of amendment is executed, being the Petroleum Law and Regulations which are in force and effect according to publications in the Official Gazette of the Kingdom of Libya prior to the submission of such undertaking. The Minister of Petroleum Affairs shall execute an agreement of amendment with such concession holder to amend such concession agreement as specified below. Except as otherwise specified in Section III hereof, such agreement of amendment shall be effective as of 1 January preceding that 12 month period ending 26 January during which the agreement of amendment is executed. Such concession agreement shall be amended by such agreement of amendment by amending the preamble and Clauses 8, 9, 13, 16, 21 and 28 thereof to read as such preamble and Clauses read in Schedule II to the Petroleum Law No. 25 of 1955 heretofore and hereby amended, except that:

(a) in subparagraph (b) of paragraph (5) (ii) (1) of Clause 8 of such concession agreement as thus amended the terms "this Concession was granted" and "at the time of the grant hereof" shall read respectively "this Concession was amended" and "at the time of such amendment";

(b) in subparagraphs (2) and (3) of paragraph (5) (a) (ii) of Clause 8 of such concession agreement as thus amended the term "year this Concession was granted" wherever it appears shall read "year this Concession was thus amended";

(c) paragraph (4) of Clause 9 and paragraph (2) of Clause 16 of such concession agreement as thus amended shall read as shown hereinbelow:

and if in order under the conditions specified in Section (III) hereof, then a paragraph (5) shall be added to Clause 9 of such concession agreement as thus amended which paragraph shall read as shown hereinbelow.

In all other respects the provisions of such concession agreement shall remain in full force and effect. The rights and remedies available to the Libyan Government and to a concession holder under any such amendments shall be in addition to any other rights and remedies of either such party under the Petroleum Law and the concession agreements of such concession holder.

(I) Paragraph (4) of Clause 9 of such concession agreement as thus amended shall read as follows:

(4) (a) For the purpose of this paragraph (4)

(1) "applicable Agreement" means all the concession agreements of the Company as last amended by the agreement of amendment by which this paragraph (4) was incorporated into this concession agreement, and all other related agreements;

(2) "other arrangement or arrangements" means any arrangement or arrangements applicable to any one or more of the enterprises engaged in producing and/or exporting crude oil in any area subject to the jurisdiction of the Libyan Government (other than the enterprise carried on by the Company) and includes

the agreements, the Petroleum Law, rates of rebates, discounts and allowances applicable to such other enterprises from time to time;

(3) The "area subject to the jurisdiction of the Libyan Government" includes the regions of seabed and subsoil adjacent to the Libyan littoral which are so subject for purposes in connection with the production and export of crude oil.

(b) (i) In recognition of the Company's willingness to amend this concession agreement by the agreement of amendment by which this paragraph (4) was made a part of this concession agreement, and subject to the provisions of subparagraph (iv) of this subparagraph (b), the Company shall not be required to make in respect of any complete year total payments to the Libyan Government in connection with crude oil exported by the Company which when aggregated would be greater than the aggregate amounts which would be paid by the Company in connection with such crude oil if there were applicable to the Company in respect of any such year whichever other arrangement or arrangements would be most favourable to the Company.

It is understood that such total payments include the value calculated on the basis of the applicable posted prices of any crude oil taken in kind by the Libyan Government in that year under this Concession and the Law.

(ii) The Ministry of Petroleum Affairs and the Company shall upon request by the Company exchange information regarding and discuss the partinent facts and circumstances applicable to, as well as the provisions of, each such other arrangement or arrangements.

(iii) (1) In order that a fair comparison can be made between the amounts which but for the operation of this paragraph (4) would be payable by the Company and the amounts which would be payable under any such other arrangement or arrangements, the amounts so payable shall be equitably adjusted in the computation made for the purposes of such comparison. In making such equitable adjustment the Ministry of Petroleum Affairs and the Company shall give due regard to the basic difference between, on the one hand, the provisions of the applicable Agreements and the provisions of the Petroleum Law applicable to the Company and, on the other hand, the provisions of such other arrangement or arrangements, and to the circumstances related to the activities or operations of the Company on the one hand and to such other enterprises on the other hand, under the applicable Agreements or such other arrangement or arrangements, as the case may be, including but not limited to any burdens, directly or indirectly relating to or arising out of such activities or operations.

(2) The Ministry of Petroleum Affairs and the Company will consult with each other on the equitable adjustments which are required under this paragraph (4) in order that a fair comparison can be made between the amounts which would be payable under the applicable Agreements and any other arrangement or arrangements and will exchange the requisite information to enable each a comparison to be achieved.

(3) Without restricting the generality of the previous subparagraph and the provisions of this paragraph (4) the Ministry of Petroleum Affairs and the Company shall take into consideration the following matters:

(a) For the purpose of ascertaining the profits which would have resulted from operations in Libya to the Company in any given complete year if any other arrangement or arrangements had applied, the weighted average percentage rate of discounts off posted prices calculated on total crude oil exported under such other arrangement or arrangements in the complete year in question shall be applied to the value at the applicable posted prices of all crude oil exported by the Company in that year.

If no price has been posted for crude oil produced under the other arrangement or arrangements, it shall be deemed for the purpose of calculating the weighted average percentage rate of discounts referred to above that a price has been posted for such crude oil consistent with other prices posted in Libya. As used in this subparagraph "discounts" shall include all allowances, rebates and other deductions from the posted price permitted by the Libyan Government under such other arrangement or arrangements for the calculation of income for the purposes of payments to the Libyan Government including income tax payments.

(b) When ascertaining the amounts which would be payable by the Company under any other arrangement or arrangements, the Ministry of Petroleum Affairs and the Company shall give due regard to the manner and the proportions in which fixed and working capital has been provided under such other arrangement or arrangements and to such amounts as may be included in the operating costs of the other arrangement or arrangements for interest on capital.

(c) For purposes of ascertaining the profits which would have resulted from operations in Libya to the

Company if any other arrangement or arrangements had applied, the costs and expenses and other applicable deductions of the Company for the complete year in question shall be used, subject to such equitable adjustments as may be appropriate.

(iv) The aggregate amounts payable in respect of any complete year under the provisions of the applicable Agreements and under the provisions of the Petroleum Law applicable to the Company in connection with crude oil exported by the Company, shall not as a result of the application of the provisions of this paragraph (4) be less than the aggregate of the payments which the Company would have been obliged to make to the Libyan Government in respect of such year in connection with such crude oil, calculated in accordance with the provisions of the Company's concession agreement or agreements in force and effect immediately prior to the effective date of the agreement of amendment by which the provisions of this paragraph (4) were incorporated in such concession agreement or agreements. It is understood that such aggregate amounts payable include the value calculated on the basis of the applicable posted prices of any crude oil taken in kind by the Libyan Government in that year under this Concession and the Law.

(v) There shall be excluded from any computation made pursuant to the provisions of this paragraph (4) any payments or amounts payable in respect of natural gas or refinery operations.

(vi) If following the discussions referred to in subparagraph (b)(ii) of this paragraph (4) the aggregate total payments made to the Libyan Government by the Company in respect of any complete year in connection with crude oil exported by the Company with

crude oil exported by the Company are found to be in excess of the maximum amount required to be paid as limited by the other provisions of this paragraph (4), the Company shall be entitled to deduct such excess from the income tax, other direct taxes and surtax payable by the Company in that year or following years.

(II) Paragraph (2) of Clause 16 of such concession agreement as thus amended shall read as follows:

(2) This Concession shall throughout the period of its validity be construed in accordance with the Petroleum Law and the Regulations in force on the date of execution of the agreement of amendment by which this paragraph (2) was incorporated into this concescession agreement. Any amendment to or repeal of the Company without its consent.

(III) If in conformance with this Article XII a concession holder undertakes in a writing executed and delivered to the Ministry of Petroleum Affairs prior to 15 December 1965 the obligation to execute an agreement of amendment no later than 26 January 1966 which shall amend in accordance with the conditions and provisions of the Petroleum Law No. 25 of 1955 as last amended by this Decree Law all the petroleum concession in Libya of such concession holder granted before the coming into force and effect of the Decree which shall read as set forth hereinbelow. Such of this Decree Law, notice of such delivery of such undertaking shall be published in the issue of the Official Gazette of the Kingdom of Libya first appearing after the date of such delivery and, if such agreement of amendment is executed no later than 26 January 1966, a paragraph (5) shall be added by such agreement of amendment to Clause 9 of each such petroleum concession agreement of such concession holder which shall read as set forth hereinbelow. Such agreement of amendment shall be effective as of 1 January preceding that 12 month period ending 26 January during

which the last such agreement of amendment is executed by a concession holder who complied with the conditions specified above in this section III. Such paragraph (5) shall read as follows:

(5) (a) The basis, including the levels of posted prices, rebates, discounts and allowances, used by the Company in determining the amount of payments, including royalty, made to the Government by the Company is the proper basis for determining the Company's liabilities to the Government with respect to all the periods prior to the effective date of the agreement of amendment by which this paragraph (5) was incorporated herein. This provision does not apply to the basis used by the Company for income tax and surtax purposes to determine its operating expenses and overheads as defined in Petroleum Regulations No. 6, as in force and effect on such effective date, with respect to which the Government and the Company reserve their respective rights and position.

(b) The agreement of amendment by which this subparagraph (5)(b) was incorporated herein constitutes a satisfactory settlement for all time of:

(i) all matters relating to (A) the amount of the royalty referred to in subparagraph (c) of paragraph (1) of Article 13 of the Petroleum Law as in force and effect on the date of execution of the agreement of amendment by which this subparagraph (b)(i) of this paragraph (5) was incorporated herein, and referred to in paragraph (1) of Clause 7 of this Concession, and (B) the treatment of such royalty for purposes of surtax referred to in paragraph (1) of Article 14 of such Law and referred to in paragraph (1) of Clause 8 of this Concession, and (6) any

negotiations or other communication between the Libyan Government and the Company relating to any and all matters referred to in this subparagraph (b)(i).

(ii) all matters relating to the "Marketing" expenses of crude petroleum for export from Libya (that is the expenses of selling and arranging for the lifting of such crude petroleum such expenses for the purposes of this subparagraph not to exceed as of the effective date of this agreement of amendment U.S. ½ per barrel of such crude exports) exclusive, for purposes of this subparagraph (b)(ii), of rebates and discounts from the posted price granted by the Company, and to any negotiations or other communication between the Libyan Government and the Company relating to any and all such matters.

(c) The agreement of amendment by which this paragraph (5) was incorporated herein shall be effective as of 1 January preceding that 12 month period ending 26 January during which the last agreement of amendment, by which the provisions of this paragraph (5) were incorporated into any petroleum concession agreement in Libya, was executed.

APPENDIX B

LEGAL OPINION

IN CONNECTION WITH THE NATURE AND EXTENT OF THE RIGHTS OF THE HOLDER OF AN OIL CONCESSION UNDER THE LIBYAN LAW (1957-1973)

1. The undersigned, DR. HASSAN AHMED BAGDADI [whose qualifications are set forth at the conclusion of this opinion], was requested to examine the statement of facts in Cause No. 952,564, styled Nelson Bunker Hunt, et al versus Coastal States Gas Producing Company pending infront of the District Court of Harris County, Texas 133rd Judicial District and express his opinion in connection with the prudent and elucidating remarks put forward by the Honorable Judge, in the following terms with respect to information about the Libyan Law:

> Now, I state these as general policy reactions, and it is behoovent on this Court not to try to mirror what the law should be or what I would want it to be, but I must act on what the law is and what the authorities say.
>
> Now. I am concerned very much with what the law of Libya is. The law of what is real property, what is personal property, what is a property right, what is ownership, what is title is something that is very basic to a nation itself. I can certainly see in a case like the Couch case where there is a litigation between two American citizens for an action that occurred in Libya, how the Libyan law would be very incidental to the type of recovery that should be made, because the tort law of Libya certainly would have some application, but I can see how when there are residents of the U.S., the U.S. could put its law above the law of the country in which it occurred, particularly in litigation.

But, we have a situation here not resolving the conflicts between two aliens to the nation of Italy in a tort action, but rather involving what is the very basic law of the nation of Italy with regard to property rights, and I kind of wondered what type of monster we could create if we had an international law situation which would allow international courts to invade the very basic laws of nations and determine what the property rights and the whole law of granting property rights should be within the individual nations.

On one hand, we have inequities that are perpetrated upon individuals, and certainly a very valid distinction was made between the inequities which were perpetrated upon aliens and upon residents of a nation, but is the solution to resolving these inequities the writing by international courts the basic laws of these lands? Can we grant a property right where such was not granted under the laws of the nation in the concession itself?

So, are we not saying in a sense that some of the basic questions are these: If Hunt received title to the oil, the expropriation was invalid, then Hunt kept title to the oil?

If Hunt did not receive title to the oil until such time as it was extracted and the expropriation was valid, still, Hunt did not get title to the oil that was extracted and so Libya had a right to sell it because title had never passed out of Libya?

So, this, to me, seems a very basic question as to what the law of Libya is, whether we can superimpose international law on such a basic thing as the very nature of property within a nation, and if we can superimpose international law upon the basic laws of the nation with the excuse that we are doing it to enforce rights of aliens, then, what will the future bring with international law supervening domestic law and municipal law on a multitude of other matters?

A contract was entered into between Hunt and Libya. This court can give nothing further than that which

Hunt received in the contract with Libya, and so if I am convinced that Hunt received nothing more through this contract than the right to produce, how can this Court expand that right to an ownership by some principle of international law?

Basically, can international law allow the courts of one nation to go into a second nation and rewrite the laws of the second nation because the courts of the first nation do not like the results which occur when a citizen of the first nation has operated under the laws of the second nation?

2. Being an expert in Egyptian and Libyan Laws, I am trying to the best of my ability to explain in the following pages my opinion as to the issue at stake, on the basis of the concepts presiding over and the provisions contained in the Libyan Law which is derived almost totally from the Egyptian legal system.

However, it is useful to recall from the very outset that under Libyan Law (and the Egyptian Law as well) a concession is not a contract or deed of sale of any tangible asset or thing. It does not transfer any title to any land or sub-soil strata or any oil existing therein.

The holder of a concession is granted a privilege or an exclusive priority to extract oil through his own efforts and means; and is accordingly entitled to receive a remuneration or compensation in kind out of the oil extracted in this manner. Prior to carrying out such extraction, he can neither dispose of any oil nor claim any title thereto.

This basic concept is an essential prelude for a better understanding of the specific legal aspects of the Libyan system set out hereinafter.

PART I

TITLE TO THE STRATA AND CONTENTS THEREOF

(A) *State Power As To Sub-Soil Wealth:*

3. The birth of Libya as an independent state through the support and the advice provided by the United Nations is one of the most successful achievements in the field of international cooperation of this century. In point of fact, from the plan set up by the United Nations Organization emerged for the first time a state extremely poor in terms of economic resources and national cohesion. However with the earnest and sincere assistance of the world wide expertise working in the interest and for the benefit of an international ideal, the United Nations Organization was more than proud of setting up for Libya a constitution and a series of basic laws in line with the recent trends generally recognized in the modern world.

Nothing would be more conclusive in this respect than quoting the following from the letter dated October 30, 1951 of Mr. A. Belt, the United Nations Commissioner in Libya, to Mr. Trygve Lie, Secretary-General of the United Nations by that time (Second Annual Report of the United Nations Commissioner in Libya, General Assembly, Official Records Sixth Session Supplement No. 17 A/1949):

> In accordance with the resolution of the General Assembly I have attached to this report as Annex 1 to XIX a number of documents which I wish to bring to the attention of the United Nations. These include the constitution of the United Kingdom of Libya, the documentation to the transfer of powers . . . .

4. The same letter adds the following:

> The reader of this report will find clear evidence that the new Libyan state will continue to need technical and financial assistance from the United Nations, the specialized agencies and friendly governments. Such assistance will be needed not only to meet the deficit of the normal administrative budget of the new state during the initial years, but also for its economic and social development. . . .
>
> I am glad to be able to record my deepest appreciation for the substantial technical assistance which the United Nations and the specialized agencies have already rendered to Libya . . . In this task, the United Nations and the specialized agencies acting through the Technical Assistance Board, have responded most generously to requests to aid in Libya, which is a special responsibility of the United Nations . . .
>
> I have pleasure in recording my appreciation of the consideration and helpfulness shown to me by the Administering Powers, both in London and in Paris . . .

The above quoted lines may illustrate dramatically the efforts exerted by the International Community in order to ensure for the new borne state a constitutional organic system as well as a set of basic laws in line with international modern concepts. Accordingly and in consideration of the economic requirements of an ailing economy, the *imperium* or powers relating to "Concessions", "Monopolies" and "Sub-soil wealth and Prospecting and Mining" were to be transferred from and by the Administering Powers to the new state (v. op.cit p. 97, and 131/137). Thus, on the basis of agreements reached in this respect, Article 38 of the Libyan Constitution of October 7, 1951 was worded as follows (v. same document p. 63):

> Joint Powers
>
> In order to ensure co-ordinated and unified policy between the Provinces, the legislative power relating to the following matters shall be within the competence of the Provinces acting under the supervision of the Federal Government:

. . . . omisses . . . .

(5) Monopolies and concessions

(6) Sub-soil wealth and prospecting and mining . . .

6. It is to be noted that a provision of this sort was intended not only to assert that sub-soil wealth falls within the jurisdiction or rather the *imperium* of the state but also to confirm in particular that it is kept outside the sphere and beyond the reach of any private or individual ownership. This concept was already adopted by Egypt and Iraq in slightly different wording (v. same document referred to hereinabove which refers to Egyptian and Iraqui constitutions and other European constitutions as sources of the Libyan constitution). Indeed, Article 137 of the Egyptian Constitution of 1923 (v. Raafat and White Ibrahim, Constitutional Law, Cairo 1937, p. 749) provided as follows:

> No public loan or commitment entailing expenditure of the treasury in a future year or years may be entered into or undertaken without the approval of the Parliament.
>
> Any and all concessions covering the exploitation of a national natural resource or an interest of public utility as well as any monopoly could not be granted except by a law and for a limited period of time.

And while Article 93 of the Iraqui Constitution of 1925 limited the right of the Government to dispose of any property owned thereby except in accordance with the provisions of the law Article 94 (v. Godchot. Les Constitutions du Proche et Moyen — Orient, Paris 1956 p. 202) provided as follows:

> No monopoly or concession for the exploitation or the development of natural resources of the country or public utility services may be granted and no delegation for collecting Government returns may be authorized except in accordance with the Law; it being understood that in case a monopoly or a concession or a delegation is granted for more than three years a special law shall be voted for each specific case.

In both countries special laws were enacted with a view to confirming that natural resources including minerals, oil and other sub-soil formations are exclusively owned by the State.

(B) *Ownership of Sub-Soil Wealth:*

7. Along the same lines Libya enacted on September 5, 1953 Law No. 9 relating to "Minerals." Article 1 of that law provided as follows:

> 1. All minerals existing in Libyan lands are owned by the State of Libya. No one may search for or develop or obtain such minerals without a permit or a monopoly granted in accordance with Article 2 of this law.
>
> 2. The word "minerals" means all materials having an economic value and forming integral part of the land or extracted naturally therefrom including petroleum and natural gas, but not building stones or vegetal formations.
>
> 3. Natural salt shall remain subject to the law in force at the present time till promulgation of another law.

8. In consideration of the fact that the ownership reserved for the State by the above quoted provision may cover "sub-soil wealth," Article 812 of the Libyan Civil Code of November 28, 1953 dealing with the extent of the right to ownership was and is still worded as follows:

> 1. The owner of anything shall own any such essential elements thereof as may entail, if separated therefrom, its perishing, deterioration or alteration.
>
> 2. The ownership of the land includes that which is above and below as far as it can be usefully enjoyed

in height and in depth without prejudice to the law concerning quarries and mines.

3. The ownership of the surface of the land may, by law or by agreement, be separated from that which is above it and that which is below it.

The terms "without prejudice to the law concerning quarries and mines" appearing at the end of the second paragraph of the above quoted Article are meant to reconfirm the same basic concept of keeping the sub-soil wealth-covering minerals provided for in the preceding paragraph of this opinion — far from being susceptible to any private ownership under any conditions.

9. The same principle was later emphasized by Article 1 of Petroleum Law No. 25 of 1955 reading as follows:

1. All petroleum in Libya in its natural state in strata is the property of the Libyan State.

2. No person shall explore or prospect for mine or produce petroleum in any part of Libya, unless authorized by a permit or concession issued under this Law.

As may be easily observed, this provision is the pivot of the whole system. It asserts emphatically that the ownership of the oil "in its natural state in the strata" is vested exclusively in the State. Only extraction of such oil may be authorized under a concession granted in compliance with the said Law. But nothing in that law nor in the form of concession attached thereto may be constructed as an explicit or inferred conveyance or transfer of any title to the oil itself while in the strata to the holder of the concession.

10. This conclusion is all the more clear that the ownership of the state is, in reality, the corollary of the powers transferred to the State by Article 38 of the Libyan Constitution.

It is therefore an ownership coupled with and strengthened by an *imperium* or a sovereign prerogative of public law; and as such title thereto could neither be alienated nor limited by any transfer or conveyance. This is the reason for which extraction or production of oil is authorized only by and under a concession issued in accordance with a specific law and governed mainly by the rules of administrative law. In this respect one of the authorities in this field, Professor Assanhoury (Civil Code of Egypt, Vol. 8, Cairo 1967, note No. 1 of p. 577) expresses the following:

In Egypt minerals and materials of quarries are owned by the State under the provisions of the law. Consequently extraction or production thereof is granted under concessions as in the case of all other public property or ownership.

11. Under all European and Middle East legal systems, including Egyptian Legal System and Libyan Legal System a concession drawn up along the patterns of administrative law is never construed as an instrument for transferring any title to an immovable tangible assets (v. for Egypt El-Tamawi, Administrative Law, Cairo 1975, p. 368 and p. 544 — for Italy D'Avanzo, Diritto Miniero, Roma 1975 p. 178 — for France Haurio, Precise de Droit Adminitratif, Paris 1933, p. 1062). Products extracted under any concession have a status totally different from that of materials kept or existing in the strata.

In this connection, there are two guiding lines to be borne in mind. On the one hand the recent economic developments are underlying modern legal structures under which sub-soil wealth is becoming rather a public ownership of the state (v. on the nationalization of petroleum in France Waline, Droit Administratif, Paris, 1959, p. 644 and 646). On the other hand a clear distinction between

the right to extract from a strata and the right to the strata itself is no longer argued.

It is therefore crystal clear that, in the context of the Libyan Constitution and the Libyan Civil Code, the provisions of Article 1 of Libyan Petroleum Law No. 25 of 1955 cannot, by any standards of legal construction, be stretched in order to comprise any matter lying beyond an authorization to extract oil under any petroleum concession. Conveyance or transfer of any title to oil deposited or lying in the strata is rather hard if not impossible to believe.

(C) *Characterization Of The Right To The Strata:*

12. By its physical nature the strata and contents thereof are immovables under the provisions of Articles 82 and 83 of the Libyan Civil Code worded as follows:

> Article 82: Things which are fixed and which cannot be removed without damage are immovables. All other things are movables.
>
> A movable placed by its owner in an immovable owned by him with the intention of serving or exploiting such immovable is considered an immovable by reason of its destined use.
>
> Article 83: All real rights over immovable property including the right of ownership and all suits relating to a real right over an immovable are deemed to be immovable property.
>
> All other proprietory rights are deemed to be movable property.

13. Pursuant to the principles underlying the provisions quoted in the preceding paragraph, the Egyptian Mixter Courts — composed of American and European eminent lawyers — decided as far back as 1911 that mines are immovables by their nature (Mixte Court of Appeal, 14

June 1911 B. 23 p. 363). The recent Egyptian laws (v. Law No. 136 of 1948 referred to and explained in length in Kamel Moursi Pacha, Principal Real Rights, Volume 1, 1951, p. 42) as well as accredited authors adopt the same concept. For example Assanhoury (op. cit p. 80) states unequivocally the following:

> Minerals in mines are governed by the same rule as stones in the quarries. Minerals and stones in the sub-soil or the mountains are deemed to be part of the land or the mountain. They are immovables by their nature.

But what are the characteristics of the right of ownership exercised by the State on such immovables?

14. Here comes the famous distinction between "real rights" and "personal rights" adopted both by the Libyan Civil Code as well as by the recent and the old Egyptian Civil Codes. Nothing is more edifying in this respect than quoting the following from the classic book of late Mr. Walton (a Canadian scholar who was dean of the Egyptian School of Law and the Law Faculty of the University of McGill, Montreal) written in English on the Egyptian Law of Obligations (London 1920 p. 5-7):

> Patrimonial rights are of two kinds which differ widely as to their effects. In the first place, a man may have the right to enjoy the possession and use of some portion of the physical world, immovable or movable, and to dispose of it as he thinks fit. This is what we call ownership. The owner, provided he possesses full personal capacity, can do what he likes with his own except in so far as there may be provisions of law which prohibit an owner from doing certain things;
>
> The title of the person whose right is real is given to him by the law itself. It is not a right against a particular person but a right against all the world, a right to cry "hands off" to anyone who interferes with

him. On this account such rights were called by the Roman lawyers jura in re,

In sharp contrast to this group of rights we have those rights which consist in a claim against a determinate person to compel him to deliver some material thing or to do or abstain from doing some definite act. Here the right exists only because a particular debtor, either the person originally bound or some person who has succeeded to his liability. The debtor is bound because he "is obliged", and to that extent he is in a different position from the rest of the world. If I am the owner of a house my right to the uninterrupted enjoyment of it is a right as against anybody — erga omnes. But if I am the lessee of a house my right to be protected in its enjoyment is a right against my lessor only. These rights or claims against a particular debtor were called by the civilians jura ad rem, and are now known as personal rights or relative rights, though the best name of all for this class of rights is "obligations".

The right of the creditor is essentially a right to control the debtor with regard to the particular thing which is the object of the obligation. To a certain extent the debtor has limited his freedom of action. Savigny, who gives an admirable analysis of the nature of an obligation, defines it thus: "The control over another person, not, however, over this person as a whole, for then his personality would be taken away, but over certain particular acts of his which must be regarded as subtracted from his freedom and subjected to our will". (Obligationrecht, chap. 1, s.2) The creditor has a right against the debtor which he has not against anyone else in the world.

A real right can exist only over a determinate thing. If I sell you 100 kantars of cotton you do not acquire the real right of ownership over them until they have be-

come determinate, and, according to the Egyptian law, determination does not take place until the cotton is delivered. (C.C.E. 268/338) But if I sell you my house or motor-car you become the owner of it at once by the effect of the contract. You may have a relative right to a thing which is still indeterminate, as if I sell you a part of a quantity of fungibles, such as twenty yards of silk which is still in the piece, or sell you some article which I have to procure or to get manufactured, but you cannot at present have any absolute or real right.

15. On the basis of the distinction brilliantly illustrated in the above quotation, the Libyan Civil Code provided in Articles 937 and 938 for the following mandatory rules:

> *Article 937:* The ownership of a movable which is described only as regards its species is transferred only upon its identification in accordance with Art. 205.
>
> *Article 938:* Ownership and other real rights over immovable property are not transferred either between parties or as regards third parties unless the rules laid down in the law regulating the publication of real rights are observed.
>
> The law regulating the publication of real rights above referred to shall indicate the acts, judgments and instruments which should be published, whether they have the effect of transferring the ownership or not, and shall determine the rules as regards such publication.

As the strata together with its oil contents, are immovables, any transfer of title thereto, especially when it comes to ownership, should comply with the mandatory rules laid down in the law regulating the publication or transcription required for the transfer of real rights. This publication or transcription consists of recording the deed of transfer in an *ad hoc* register open for everyone otherwise the transfer can never be effected or become operative *erga omnes*. The

statement of facts in the case under consideration does not reveal any evidence or indication that this mandatory publication or registration has been carried out.

Furthermore, the quantities of oil in the strata cannot be identified in accordance with the provisions of Article 937 of the Civil Libyan Code, so long as they remain in the sub-soil before extraction thereof. Therefore no transfer of title would be admissible with regard of such oil, even should it be considered movable for argument sake.

16. Based on the foregoing a concession, whatever its construction may be, is not capable of transferring any title to its holder under the Libyan Civil Code, so long as the requisites of Articles 937 and 938 quoted hereinabove are not fulfilled. In the absence of such requisites a special law should have been enacted to effect such transfer if this were the real intention or contention of the parties.

PART II

RIGHTS AND OBLIGATIONS OF THE HOLDER OF THE CONCESSION

(A) *Rights Of The Holder Of The Concession:*

17. In the remarkable award handed by the BP/Libya Concession Tribunal dated 10 October 1973, the learned single arbitrator stated the following in page 98:

> It may be added that the fact that ownership of the oil in its natural strata is vested in the State of Libya under the Petroleum Law of 1955 does not argue in favour of the claimant.

This opinion was expressed as an answer to the request of the claimant, in the case referred to hereinabove, as to his contended ownership of any crude oil extracted from the area of the Concession Agreement. I share unreservedly this opinion for the reasons expounded in Part I hereof.

The holder of a concession under the Libyan Law, and in particular under Petroleum Law No. 25 of 1955, acquires no title of whatever nature to the oil existing or remaining in the natural strata.

18. Moreover in scrutinizing Article 1 of the concession, its following wording remains conclusive as to the scope and the extent of the rights of the holder of such concession:

GRANT OF CONCESSION

> In consideration of the undertaking by the Company to make the annual payments and pay the fees, rents and royalties hereinafter prescribed and to perform and observe the terms and conditions of this Concession, the Ministry hereby grants to the Company, subject to the conditions hereof and the provisions of the Law, the exclusive right for a period of . . . years to carry out geological investigations, including aerial surveys and to search for by any other means, bore for, and extract petroleum within and over the area outlined in red on the map annexed hereto of approximately . . . square kilometers situated in the . . . zone bounded and defined as follows:
>
> The company shall also have the right to take away such petroleum whether by pipeline or otherwise from the concession area and to use, process, store, export and dispose of the same.

19. The provision indicates (a) that the concession is limited to a certain time, (b) that it is a bilateral agreement and (c) that rights of the holder are specified therein. It is significant to remark in the first place that rights under the concession are provisional. They are extinguished either at the expiration of the term or prior to the end of such term in case of failure of the holder of the concession to carry out his commitments thereunder. Under the Libyan Civil Code and the Egyptian Civil Code a right of ownership is characterized by its permanence. This concept is

based under both Codes on the provisions barring extinction of ownership in case it is not exercised by the owner for whatever length of time (v. M. Shanab, Principal Real Rights, Cairo 1974, p. 216).

A concession granted for a limited time and susceptible of cancellation in the event of reluctance of the holder to exercise his rights thereunder is not capable of conveying or transferring any ownership to such holder. In addition to this peculiar characteristic, a concession may be renewed, a fact that proves to be inconsistent with the assumed permanence of a right of ownership.

At this juncture, it may be usefully pointed to the fact that the right of ownership on a building could not be conveyed or transferred for a certain lapse of time limited before hand, nor could it be imagined that the ownership on a car may be subject to a monthly or annual renewal.

Provisional rights are by their essence provisional and the limitation of time in concessions is designed to highlight this fact and to eliminate any doubt as to the existence of any conveyance or transfer of ownership.

20. Moreover, the bilateral character of the agreement is entailing restrictions on the rights of the holder of a concession incompatible with the liberty or the free will of an owner.

Suffices it to reproduce to this end the provisions of Clauses 4 and 5 of the concession form attached to the Petroleum Law No. 25 of 1955:

CLAUSE 4

Working Obligations

(1) The Company shall, within eight months from the date of the grant of this concession, commence operations

to explore for petroleum within the concession area and shall diligently prosecute all its operations under the concession in a workmanlike manner and by appropriate scientific methods. In furtherance thereof the Company shall spend in Libya or elsewhere on, or in connection with, the said operations including general organizational, overhead, and administrative expenses connected therewith such sums as may be required in order to comply with the provision of Article 11 of the Law.

(2) Any sum spent during any of the working periods specified in Article 11 of the Law in excess of the minimum sum prescribed for that period shall be carried forward as a credit to the Company against the expenditure for the following period or periods.

CLAUSE 5

Company to Follow Good Oil Field Practices

The Company shall carry on all its operations under this Concession in accordance with good oil field practices and so that when petroleum is found it shall be produced in reasonably substantial quantities having regard to the world demand for petroleum and economic exploitation of the petroleum resources of the concession.

21. But the most important feature of the concession is the express enumeration of the basic rights granted to the concession holder. This latter is authorized under Clause 1 to the following:

> to carry out geological investigation, including aerial surveys and to search for by any means, bore for, and extract petroleum within and out the area outlined in red. . .

Up to this point the holder of the concession has a right to extract oil. Obviously this is a right to do something

namely extraction of the oil but not acquiring any title on it.

The same Clause continues as follows: the company (i.e. the concession holder):

> shall also have the right to take away such petroleum whether by pipeline or otherwise from the concession area and to use, process, store, export and dispose of the same.

Without sticking to a literal interpretation of this provision, the right of the holder of the concession to dispose of the petroleum is limited to such quantities as he might extract and export. Without extracting, export of oil is excluded and the right to dispose thereof does not exist.

(B) *Nature Of The Rights Of The Holder Of The Concession:*

22. Taken as a whole the rights flowing from a concession in favor of its holder are only "personal rights" within the meaning of the Libyan Civil Code as explained in the Part I of this report. They are not "jura in rei." Even some French authorities are of the opinion that the category to which belong a concession granted under the Libyan Law is similar to the category of concessions of public works developed in France (v. Hauriou op. cit p. 1052-1062).

In Libya Articles 667 and 668 may provide valid guidelines for the characterization of the rights of the holder of a concession in Libya. They are worded as follows:

Concessions for public utility services

> *Article 667:* A concession of a public utility service is a contract whose object is the management of a public utility service of an economic nature. Such a contract is concluded between the administrative authority in charge of the organization of such a service

> and a private person or company to whom the exploitation of the service is entrusted for a fixed period.
>
> *Article 668:* The concessionaire of a public utility service undertakes, by the contract concluded between him and the consumer, to provide the latter in a normal matter with the services corresponding to the rates which he collects, in accordance with the conditions stipulated in the contract of concession and its annexes and also with the conditions which the nature of the work and the laws applicable thereto demand.

23. The fact that the holder of an oil concession is entitled to obtain a certain quantity of the oil he extracts does not have any bearing on his rights under the concession. The quantity obtained is in fact a remuneration to which he is entitled in consideration of his efforts and expenses for the extraction.

In conclusion, in my considered opinion, under Libyan Law:

> (i) The petroleum concession does not convey or transfer any title to the natural strata or the oil existing therein.
>
> (ii) The rights of the holder of the concession are not real rights or "jura in rei"; they are "personal rights" falling within the framework of the law of obligations, and not the law of ownership.
>
> (iii) The holder of a concession is entitled only to claim oil extracted by him through his own means and by his own efforts.

(Qualifications of Dr. Baghdadi)

Born in Cairo on January 19, 1911 graduate of the Faculty of Law of the Cairo University in 1932, Ph.D from the same University in 1937.

Assistant lecturer in the Faculty of Law of the Cairo University 1932 and later lecturer in the same Faculty in 1937, working during that period and up to 1939 in close cooperation with the

late Professor V. Arangio Ruiz (famous Professor of Roman Law and History of Law — Naples and Rome Universities) late Professor R. Leballe (Professor of Civil Law — Universities of Liles and Paris) and late Professor Assanhoury (Professor of Civil Law — Cairo University — who drafted the Egyptian, the Syrian, the Iraqui and the *Libyan* civil codes).

Assistant Professor, Professor of Civil Law and Private International Law and later Dean of the Faculty of Law of Alexandria (1942-1953).

Author of several books and papers in Arabic, French and English.

Professor on the Faculty of Law of the Baghdad University and legal counsel for the Prime Minister of Iraq (1954).

Main assistant of late Professor Assanhoury in drafting the Egyptian, the Iraqui and the Libyan civil codes.

Representative of Egypt and Yemen in the United Nations in several sessions, and in particular in 1949 at the session where the *Libyan* independence resolution was passed.

Member of the State Council (for oil concessions) and President of Section in the High Administrative Court of Egypt.

Counsel for the Governments of Egypt (Ministries of Justice, Public Works and Foreign Affairs) Yemen and *Libya* (1953 for completing Libyan Civil Code and providing legal advice for the Libyan delegation negotiating the "ente" problems in Italy.

Minister of Commerce, Industry and Supply (Egypt 1953-1954).

Vice-Chairman for the Egyptian Delegation and first counsel thereof in negotiating the Suez Canal Settlement (1958).

Counsel and International Consultant (United States Steel Corporation, American Cyanimid Corporation, First National City Bank, IBM and some other important European banks and corporations).

APPENDIX C

ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

The Civil Court of Siracusa — Second Section — consisting of the following magistrates:

Dr. Salvatore Astuto — President

Dr. Corrado Centaro — Rel. Judge

Dr. Italico Libero Troja — Judge

has issued the following

SENTENCE

in the civil suit No. 2852/71
brought by

B. P. EXPLORATION COMPANY (LIBYA) LIMITED, with headquarters in London, represented and defended by Attys. Giuseppe Rizza, Pier Carlo Bruna and Giandomenico Magrone

Against

ASTRO PROTECTOR COMPANIA NAVIERA S.a., in the person of its legal protempore representative, with headquarters in Panama City, Republic of Panama, represented and defended by Atty. Piertro Romano — defendant,

and concerning

SINCAT Societa Industriale Catanese, represented and defended by Attys. Giorgio Balladore Pallieri, Giorgio Baldini, Alessandro Gargnani and Ugo Gianformaggio.

And Against

the intervened

NATIONAL OIL CORPORATION L.A.R., with headquarters in Tripoli, Libya, in the person of Eng. Ahmad Scetewi, represented and defended by Attys. Lelio Basso, Luciano Ventura and Mario Lana, who elected domicile in Siracusa, at the office of Atty. Giuseppe Trigilio, by whom said company is also defended and represented.
and in the suit registered at No. 50/72

Brought by

B. P. EXPLORATION COMPANY (LIBYA) LIMITED, with headquarters in London, represented and defended by Attys. Giuseppe Rizza, Giuseppe Ferri, Pasquale Chiomenti, — *plaintiff*

Against

SINCAT Societa Industriale Catanese, with headquarters in Palermo, represented and defended by Attys. Giorgio Balladone Pallieri, Giorgio Baldini, Alessandro Gargnani and Ugo Gianformaggio, — *defendant*

Against

NATIONAL OIL CORPORATION L.A.R., mentioned above, represented and defended by Attys. Lelio Basso, Luciano Ventura, Mario Lena, Giuseppe Trigilio — intervener.

During the hearings for remission of the suit to the Court (Suit No. 2852/71) Atty. Rizza thus concluded:

> "Upon joining the present suit with the suit brought against SINCAT, by summons notified in Palermo, on 1/3/1972, and in Milan on 1/4/1972, may the Court of Siracusa validate the judicial distress; recognise the

> right of B. P. to the temporary custody and to the acquisition of the documents and samples distressed, with any other consequent decision, also with regard to judiciary expenses and fees."

Atty. Romano thus concluded:

> "May the Court of Siracusa principally and prejudicially authorize the exclusion of the concluding party from the present trial; subordinately, acknowledge and notify that the concluding party is relying on the justice of the Honorable Court, having won the legal costs, in any case."

Atty. Gianformaggio thus concluded:

> "In a preliminary way, according to customs and merits: any contrary petition and exception should be rejected, while ascertaining and declaring the absence of legitimate liabilities for the defendant SINCAT, with regard to all requests from the Plaintiff.
> Precisely, any contrary claim should be rejected, and the defendant SINCAT should be released from all claims from the Plaintiff. All expenses should be refunded, as well as the attorney's charges and the lawyers' fees."

Atty. Giuseppe Trigilio thus concluded:

> "May the Court of Siracusa reject the petition for validation, while declaring that the distress has lost its validity, or that, anyway, the motives which may have caused the presidential ordinance of December 30, 1971, have ceased to exist."

As for suit No. 50/72, Attys. Rizza and Magrone, thus concluded:

> "In a preliminary way, may the Court declare the connection between the present trial and the pending trial for the validation of distress of documents and samples of crude oil. This trial is pending at the first

section of this same Court, and is registered with No. R.G. 2852/71; the ascertainment requested in this latter trial is instrumental for acquiring evidence for the present trial, with regard to the distress measures. May the Court then submit the proceedings to the Court President for further action. In a secondary and preliminary proceeding, may the Court order the acquisition for this trial of the samples and documents held by Eng. Bruno Corso, as from distress ordinance of December 30, 1971, from the President of the Court of Siracusa.

Still in a preliminary proceeding, may the Court allow questioning of the lawyer representing Linoco, on the following subjects:

I) Whether it is true that, during all of 1971, the Libyan Government, with regard to Concession 65, has never availed itself of its right, granted by Art. 13 of the Petroleum Laws, to collect in kind the royalties accumulated in the favor, for the oil mined by the grantees; neither has it availed itself of the right reserved by Art. 8, Par, 10 of the Concession, to purchase crude oil from the grantees, at a special price."

II) Whether it is true that ARAB GULF EXPLORATION COMPANY has not purchased, during 1971, from the other grantee Hunt, any crude oil mined from the SARIR field."

The right is reserved to request evidence through witnesses, and to indicate the relative texts upon completion of questioning. With regard to this, any contrary petition, exception or deduction is rejected, even for what concerns proposability of the suit and jurisdictional competence of the present judge, while it should be acknowledged that the load of crude oil transported from Marsa al Hariga to Priolo, Augusta, on the ship Capetan Elias, and unloaded and stored in Priolo Augusta, on January 1st, 1972, in the storage of the defendant SINCAT, originated from the

concession field No. 65, belonging to the Plaintiff, in the SARIR area; it should be declared that such load belongs to the Plaintiff and, therefore, the Defendants or either Defendant should be ordered to actually return the above mentioned goods to the Plaintiff, by placing the merchandise at the Plaintiff's disposal and delivery in the location where it is presently being held, while sentencing SINCAT and LINOCO to pay for trial expenses and fees, with a provisional execution sentence clause.

Subordinately, in case that the claimed merchandise is no longer in the possession of the defendant, SINCAT and LINOCO should be jointly sentenced to pay the Plaintiff for the value of the crude oil, as well as for damage claims to be settled separately.

Expenses still to be paid by the Defendants. The counsel for the defense of the National Oil Corporation L.A.R. thus specify their conclusions:

"May the Court of Siracusa reject the petition submitted by B.P. Exploration Company (Libya) Limited, claiming the ownership of 37,226.7 tons of crude oil, mined from the SARIR oil field and stored in the tanks of Societa Industriale Catanese SINCAT, in Priolo, Augusta;

declare temerity and issue the sentence prescribed by Art. 96, Paragraph 1, C.P.C., against B.P. Exploration Company (Libya), Limited.

Fees and legal expenses having been won."

Atty. Ugo Gianformaggio, legal attorney for SINCAT, thus concludes, in the name and interest of said company:

"May the Court rule as follows, upon rejection of any contrary petition, exception and defense:

I) In a preliminary way:

Any contrary petition, exception is rejected, because of absence of substantial evidence from the Plaintiff B.P., with regard to the claim of ownership by the Plaintiff; all requests are declared unacceptable and are rejected, while acknowledging that the above mentioned goods do not belong to the Plaintiff:

II) Subordinately, in a preliminary customary way:

It is ascertained and declared that the present judge has not jurisdictional competence, on matters of public law concerning the claimed contrariety of foreign international law, on which matters the Plaintiff's petition rests;

III) Any contrary petition and exception is rejected, and the defendant SINCAT is absolved from all demands made by the Plaintiff B.P.

IV) Otherwise, and for the denied hypothesis of acceptance of the petition from the Plaintiff, the Court will arrange for the called in cause Company, LINOCO NATIONAL OIL CORPORATION, to release entirely the defendant SINCAT from all demands of the Plaintiff B.P.

All expenses will be refunded as well as lawyer and attorney fees. In the event of admission of adverse evidence, the Court will allow the concluding SINCAT to provide contrary evidence, with witnesses to be named within the terms of which request is made from now on.

DEVELOPMENT OF THE TRIAL

In petition dated December 30, 1970, B.P. Exploration Company (Libya) Limited, with headquarters in London, explained to the President of the Court that it was the holder, along with Nelson Bunker Hunt, each with 50%

interest, of a permit for exploration and development of hydrocarbon deposits within the territory described as the area south of Galanscio.

The permit, which concerned more directly the field known as SARIR, bore the number 65.

In the permit area, B.P. stated, it and Hunt had 43 producing wells in operation, producing 450,000 barrels of crude oil daily. The field was connected with a pipeline 512 Kilometers long, with the terminal located in the bay of Tobruk, location Marsa al Mariga, for the construction of which B.P. spent approximately 89 million pounds sterling.

The petitioning company added that the Libyan Government, without any warning, with law of December 7, 1971, nationalized its property related to permit 65, transferring the property to a company in which the above mentioned government was the sole stockholder, called Arabina Gulf Exploration Company. For the purpose of liquidating damages, it named a commission, in order to determine without recourse the value of the expropriated property and to determine, equally without recourse, the debts owed by B.P. to be compensated with the indemnity in question.

B. P. declared that the nationalization law did not mention the manner or the date in which the accounting would be made; that the Libyan Government had officially declared, before a meeting of the Security Council of the United Nations, that the nationalization measures represented reprisals against the British Government, majority stockholder of British Petroleum Company, owner of all the stock of B.P. Exploration Company (Libya) Limited, because England had not impeded the Iranian Government from occupying some small islands, situated in the Persian Gulf, owned by Arab Sultans.

B.P. stated also that the nationalization measure was completely invalid, because it was in violation of the principles of international public laws, which forbid nationalization based on political motives or for discriminatory purposes, and which do not provide for a rapid system of payment of an appropriate and fair indemnity.

B.P. Exploration Company (Libya) Limited, declared the permit to be still in effect that granted the right, in equal parts with Nelson Hunt, to explore, produce and market the oil located in the SARIR field, oil that can be distinguished from other crudes in the area and from other oil in general because of its particular quality and chemical composition.

This attitude and conviction, the Petitioner continued, was conveyed to the Libyan Government, against whom the violation of its obligations was claimed, as the permit granting body, on the basis of the concession of December 18, 1957, No. 65, notifying the naming of the controversy in the manner and in the form stated in Art. 28 of the concession deed.

The Petitioner stated also that it had advised all involved third parties, both by means of notices published in the main newspapers of the world and by means of personal warning letters, that it considered itself to be still the owner, proportionately, of the crude produced from the fields in concession No. 65, and that it reserved the right to make, therefore, a claim against whoever had possession of any quantity of this crude oil.

B.P. added that it had obtained information regarding a shipment of crude from the SARIR field, within the limits of concession No. 65, loaded onto the ship Capetan Elias, flying a Panama flag, at the Marsa al Mariga terminal. This shipment was about to arrive or had already arrived at the terminal of the Priolo refinery, belonging to Societa Catanese Industriale SINCAT, to be processed by an unknown third party. Since B.P. was about to bring a claim suit to this Court against SINCAT, based upon Art. 1777 C.C., according to which the Defendant or holder is not allowed to dispose in any way of the merchandise discussed in the trial, until such trial is concluded, it was a matter of extreme urgency to acquire or keep some samples of the oil being transported on the above ship, before unloading. Thus, it would be possible, in a later claim, to prove that the oil pumped into the SINCAT storage tanks, because of its physical and chemical properties, was evidently oil produced from the fields in concession No. 65.

It was also very urgent, B.P. continued, to acquire the originals or at least copies of the documents concerning said shipment of crude, in order to obtain evidence of the legal origin of the shipment, of the identities of the senders and consignees, as well as of any other document held by the Captain of the Capetan Elias, in his quality of legal representative of the ship's owners and leasers. Therefore, B.P. requested that an ordinance be issued, to take an adequate number of samples of crude about to be unloaded from the Capetan Elias, and to legally seize said samples and the originals and copies of all documents likely to identify the origin of the shipment, the identities of the sender and consignee, for the purpose of bringing a claim suit against SINCAT.

By an ordinance issued on that same day, 12/30/1971, the President of the Court authorized the seizure of three samples, 5 Kg each, of the mineral oil being transported on the Capetan Elias, as well as copies of the documents of the shipowner or leaser, indicating the origin and destina-

tion of the shipment. Eng Bruno Corso was appointed to the custody of said samples and documents.

The seizure took place on the following December 31, and B.P. notified the owners of the ship Capetan Elias, Astro Protector Compania Naviera S.a., on 1/12/1972 and on 1/15/1972, through its attorney and pro tempore representative, at Icaza Ruiz Gonzalez y Aleman Colle Aquilino de la Guardia, Panama City, Panama Republic, as well as SINCAT, through its attorney and pro tempore representative, that the protective measure had been taken. B.P. also was summoning these companies before this Court, in order to validate the distress of the above mentioned samples and documents, and in order to be granted the right to keep them, while submitting all the petitions already proposed against SINCAT, by notification issued on 1/3/72 in Palermo, and on the next day in Milan. The suit was registered with No. 2852/71 R.G. After constitution of the parties, SINCAT replied with the objection of absence of "legitimate liability", since the seizure concerned merchandise which was not its property and was not retained by it.

Indeed, the shipment of crude had not yet become available to SINCAT, and neither had the ship's documents. SINCAT also stated that the shipment belonged to the Libyan company LINOCO of Tripoly, which was having the crude refined at the Priolo plant. Therefore, it requested a certain amount of time to summon said company; also, it requested a declaration of absence of legitimate liability of the Defendant and that the Defendant be released from all claims submitted by the Plaintiff.

ASTRO protector Compania Naviera S.a. replied that it was completely uninvolved in the dispute and requested to be exonerated.

Secondarily, it stated that it would abide by the decision of the Court.

National Oil Corporation L.A.R. (Linoco), with headquarters in Tripoli, intervened in the trial, through Eng. Anis Ahamed Scetewi, who appeared and explained that B.P., by means of its notification of 1/3/1972, had initiated a claim suit for a shipment of crude oil being transported for SINCAT by the tanker Capetan Elias, without any grounds for it and without mentioning this protective measure. LINOCO made objection to the validity of the seizure, since the principle of simultaneousness of validation proceedings and the suit had not been complied with.

The National Oil Corporation added that, at the hearing of 6/7/1972, in the suit initiated by B.P. for the recovery of the shipment, it had formally declared that the oil contained in the tanks of the Capetan Elias did indeed come from the SARIR field, so the validity of the seizure was without any interest to B.P. It asked, therefore, that the related request for validation be rejected.

The parties elaborated on the above conclusions and the claim suit was submitted to the College of Arbitration.

SINCAT, B.P. and all present exchanged briefs.

With deed of notification 1/3/1972, meanwhile, B.P. Exploration Company (Libya) Limited, had brought action against SINCAT before this same Court, declaring what it had previously stated in connection with the claim suit to obtain the court-ordered seizure discussed previously.

The Company had stated that, on 12/18/1957, Nelson Bunker Hunt, by himself had obtained the concession with number 65, from the Petroleum Commission of the United Kingdom of Libya, and that with its measure of 9/9/1960, that same commission had authorized Hunt to grant B.P. 50% of his interest in concession 65, so that on 10/10/1960, an agreement was stipulated, in virtue of which Hunt

transferred to B.P. an amount equal to half his interest in the concession in question. In return, B.P. assumed several obligations, among which was the undertaking of seismic surveys, and geological studies to determine suitable drilling locations, for which the Plaintiff had spent approximately 35 million pounds sterling, for the survey operations, and approximately 54 million pounds sterling for the construction of production installations, the pipeline, sea port and other equipment.

B. P., in its civil suit, having insisted again on the illegality of the nationalization measure, for reasons previously stated, and to have therefore conserved its part of the ownership of the oil taken from Libyan territory, in the zone included in concession 65, declared that it would file suit to recover the crude oil transported by the tanker Capetan Elias, and placed in the SINCAT storage in Priolo, also referring to the measures described in Art. 1777 C.C.

Therefore, B.P. requested that the shipment be declared belonging to B.P. and that SINCAT be ordered to return the crude to B.P. The suit was registered with No. 50 1972 R.G.

After constitution of the parties, SINCAT replied that the crude oil was delivered by the Libyan company Libyan National Oil Corporation (Linoco), with headquarters in Tripoli, for the performance of the operation described, according to international trading language, as "processing agreement"; according to this agreement, Linoco had delivered to SINCAT this crude, and SINCAT was supposed to refine it, and, upon payment, return it to Linoco, as products from refining.

Therefore, SINCAT stated not to be the owner of the claimed shipment, but to have only temporary custody of it. For this reason, since Linoco had to participate in the

trial, as summoned on January 25-26, 1972, it had been called, according to Art. 106 C.P.C., if necessary, according to Art. 1777 C.C. It also objected to the absence of legitimate asset by B.P., since the crude had been produced by third parties, after the Libyan nationalization ordinance. Therefore, the Plaintiff had never acquired ownership of said crude, neither according to Italian nor to Libyan law, since both were ruled by the same principles, i.e. that the products of a field become the property of the company which mines and separates them from the other matter with which they are united.

It stated also that Linoco, in good faith, had purchased this crude from third parties, on the basis of an adequate title for transfer of ownership. Therefore, according to the known principle stated in Art. 1153 C.C. of the Italian Code, and according to a similar Libyan law (Art. 980 and 981 Libyan C.C.), Linoco had become the legitimate owner of the claimed merchandise.

In addition, it stated that the problem existed, for the identification of the crude, since this could have been the crude belonging to the Libyan Government as "royalties", even before the ownership of such crude was transferred to Linoco.

With regard to the matter of international law, SINCAT raised the objection that the Italian judicial authorities evidently did not have any power (lack of jurisdiction) to rule on the application of a foreign law, internationally. These authorities could deny the validity of the laws of a foreign country on Italian territory, but could not, in this case, rule on the matter, since, indeed, the Libyan nationalization law had lost all its effectiveness abroad. It also stated that the Libyan law of 12/7/1971 was, in any case, legitimate for what concerned the expropriation, since it allowed for com-

pensation to the concern being expropriated. Therefore, it requested, in a preliminary way, that the absence of asset by B.P. be declared, and that its request be rejected. Subordinately, it requested that the lack of power of jurisdiction of the judge be declared, with regard to the matter of public law pertaining to the inconsistency of foreign laws with international laws. It also requested that SINCAT be released from all requests submitted by B.P., and, secondly, that Linoco be ordered to "deliver SINCAT from the claims of the Plaintiff" (Sic).

Meanwhile, with deed of notification of 1/26/1972, SINCAT had called the Libyan National Oil Company in court, so that it could participate in the trial and could, if needed, provide guarantees for SINCAT from every demand proposed by B.P.

Meanwhile, Linoco appeared in court and declared that the disputed shipment of oil was its property, having purchased it from the Libyan Arabian Gulf Exploration Company, which had undertaken the production of the oil from the SARIR field, in the area south of Galanscio. It stated that the shipment of the crude to SINCAT had occurred within agreements established between the oil producing companies of the Arab Republic of Libya and the Italian petrochemical companies. It declared that B.P. after the seizure of the samples and the notification of the summons, had issued a notice to the press of the entire world in reference to the cause, making it an instrument of purposes unrelated to the trial. It declared that the Plaintiff, furthermore, had not given any proof of the right of ownership claimed, and had even stated, in the introductory act of the suit, that the Libyan Government had never granted to it the ownership of the field, and that B.P. derived its alleged interest from a contract concluded with Nelson Bunker Hunt, who also was only a concession holder and not an owner.

Linoco added that the Libyan law of 12/7/1971 was in perfect agreement with the principle of international law; that, moreover, any discussion related to international legitimacy of the Libyan law of 12/7/1971 was completely extraneous to the hearing, because, on the basis of Libyan law No. 25 of 1955, to which B.P. itself had referred, the permit, which had been affected by the nationalization granted to the concession holder only the mining rights, while Art. I paragraph 1, stated the principle that all Libyan oil in the crude state in the fields was owned by the Libyan state. Linoco asked, therefore, that the demand proposed by B.P. be rejected, that the rashness of the argument be declared, and that the Plaintiff be therefore sentenced to provide compensation of the damages sustained by Linoco, because of the court action and because of the propagandistic purpose for which it had been done.

With the agreement of the parties, the Interrogating Judge began the formal questioning of Linoco and SINCAT, represented by their respective special attorneys, questioning that was inferred by B.P.

1) The question of origin of the crude in question; 2) the fact that it was still held by SINCAT; 3) the shipment was purchased by Linoco from the Arabian Gulf Exploration Company; 4) the Libyan Government, in reference to concession No. 65, had never exercised its right to collect the royalties in kind, nor that to purchase oil from the concession holder, at a special price; 5) the Arabian Gulf Exploration Company had not purchased, in 1971, crude oil taken from the SARIR field by the other concession holder Hunt.

After the preliminary hearing, B.P. asked to use witnesses to prove the circumstances mentioned in Nos. 4 and 5.

The Interrogating Judge maintained that the questions raised by the parties should be placed before the College

of Arbitration, set the hearing for the specification of the conclusion. The parties, after having exchanged briefs and deposited documents, specified the conclusions above, which they detailed with briefs or reply notes. The suit was then placed before the College of Arbitration.

REASONS FOR THE DECISION

The suits between the parties, registered as No. 2852/71 R.G. and No. 50/1972 R.G., are obviously connected and should therefore be joined. The suit concerning the validation of the seizure of the crude samples and of the documents referring to the claimed shipment, is then instrumental evidence for the primary suit. First, the objection was examined, according to which B.P. Exploration Company (Libya) would be lacking the title of ownership. It has been recommended to this Court to ascertain whether B.P. is the proprietor of the oil held by SINCAT, "animo rem sibi abendi" owned by Linoco, that purchased it from the Arabian Gulf Exploration Company, which mined it from the SARIR fields. Such fields were the subject of concession No. 65, where B.P. was sharing the concession in half with Nelson Bunker Hunt, previous consent from the Libyan Government.

The origin of this oil is not controversial, since Linoco, both in its defense and in the formal hearing, admitted the circumstance that this crude had indeed been produced from the Sarir fields.

In order to prove its proprietorship, B.P. reasoned that it had become the proprietor on the basis of Libyan law and concession No. 65.

In accordance with Art. 22, concerning Libyan law and administrative law, this Court must apply said laws and verify their pertinence to public order, in accordance with Art. 31 mentioned.

Art. 812, paragraph C.C. of the Libyan code rules that the ownership of the land includes ownership of the space above and of the subsoil, as far as it can be exploited in height and in depth, unless otherwise specified by special laws for caves and mines. Therefore, such regulation must be coordinated with the rule of Art. 1 of the Libyan Petroleum Law of 4/21/1955, No. 25, according to which all the oil of the Libyan subsoil, in its natural conditions, is considered the property of the Libyan Government, and it is absolutely forbidden to anyone to explore, research, drill or produce oil in any region in Libya, unless he holds a permit or contract for a concession, issued in accordance with this law.

By issuing concession No. 65, the Libyan Government granted the exclusive right to perform geological surveys, including aerial prospecting, to research by other means, to drill and to extract oil from the interior and on the area marked in red on the enclosed map; it also recognized the right of the concession holder to remove the oil from the area, either by pipeline or by other means, and to use it, process it, keep it and sell it. May the Arbitrating College notice that the correspondence of this law (and of its application) with the corresponding present law in Italy is evident, and it can be concluded that they are in accordance with internal public order. Indeed, it is not necessary to spend any more words on this subject, since it is sufficient to refer to Art. 840 of our C.C. and to the laws on mines, caves and peat deposits, defined in the same article, to conclude that the Libyan law is analogous to the Italian law, for what concerns the rights of the government on mines, and therefore there can be no doubt concerning the accordance of the Italian interior public order and the examined Libyan law, and the application of this law in the case of concession No. 65.

In any case, neither party raised any exception on this subject.

After discussing this preliminary subject, it is necessary to make a concrete reference to the Libyan Petroleum Code of 1955, No. 25, and to the content of the concession deed, in order to reach an exact understanding of the rights acquired by B.P. when it entered said concession with a 50% partnership.

In fact, these rights concerned only the activities described above, by which B.P. could acquire ownership of the crude oil *only at the time of extraction.*

With reference to this time, we must now consider the factual and legal situation concerning the claimed oil. At this point, it must be pointed out that it is an accepted fact that this oil has been produced by Arabian Gulf Exploration Company and not by B.P., after the Libyan Law of 12/7/1971 had been issued. By this law, the plant connected with the oil concession No. 65 was nationalized, in accordance with Art. 1, and the ownership title of all assets, real estate, rights, activities and quotas pertaining to this plant were returned to the government.

Therefore, it can be concluded that, when the separation of the product from the field occurred, not only the effects of this had already occurred, since, when B.P. ceased to produce, Arabian Gulf Exploration Company began to produce, and the Libyan government had transferred to the latter all the assets, real estate, rights and activities formerly belonging to B.P.

The following derives from the above reasoning:

1) Since B.P. had not actually extracted the oil in question, it could not have earned ownership of said oil,

in accordance with Libyan laws, which, as stated above, are according to Italian public interior order.

2) The motives, reasons, actions and omissions by which B.P. was not able to extract said oil, concern a fact which affected a different location than the Italian territory, and which, in any case, does not justify the application of a law which is contrary to public order. Indeed, for the purpose of this claim suit, it is not relevant to ascertain the regularity of the purchase of the oil shipment by Arabian Gulf and then by Linoco, but it is decisive to establish whether B.P. ever acquired ownership of said oil, in accordance with the legal system of the place where the merchandise was when it became autonomous, according to Art. 22, pre-laws, referring to the regulations concerning possession and ownership and other rights on assets and real estate, in compliance with the law of the place where they actually are.

Therefore, this quest is extraneous to this trial, that is to discover whether Linoco acquired the crude in question; it is sufficient to state that B.P. had not extracted said crude, therefore it could not possibly have earned the right of ownership.

In addition, trying to ascertain the legitimacy of the deed by which B.P. was forced to cease its activities in concession No. 65, is not pertinent to this trial, since it is not being debated here either the right of the Plaintiff to continue to exercise such activity or the right to an indemnity for the Plaintiff.

In order to confirm the irrelevancy of the question in this trial, even though strongly debated between the parties, whether the Libyan nationalization law is in agreement with the Italian interior public order, it will help to notice that, if it is supposed that such law is not in agreement

with the public order, the result of the trial would not be changed, since the fact would remain indisputable that B.P. could not have acquired ownership, since it had not extracted the oil.

Therefore, it is clear that the Plaintiff's demand cannot be accepted.

Also, the request of validation of the distress and the demand concerning the recognition of the right of B.P. to exhibit and keep the seized objects must be rejected.

In connection with this last point, this Court notices that Linoco made a groundless objection to the legitimacy of the seizure, by assuming that the principle of simultaneousness had not been observed. With regards to the content of the introductory legal deed for the trial, recorded with No. 2852/1971 R.G., it is in fact easy to notice that B.P., after referring to the performed protective measure, was, at the same time, requesting validation of its right to keep the seized samples and documents, by Art. 980 paragraph II c.p.c.

It is indeed evident that the request concerning the seizure cannot be corresponding to the request for claim of the oil, since the seized material was not the whole shipment of crude, transported by the Capetan Elias, but samples and documents from said shipment.

Therefore, the request concerns the right of B.P. to be granted the right to exhibit and keep the seized objects.

However, the Court remarks on this matter that, since B.P. is not the owner of the oil, it is not even entitled to the right to exhibit and keep the samples and documents mentioned above, and therefore requested their seizure without motive.

Finally, Linoco's request for sentencing B.P. to payment of damages for added responsibility cannot be granted, according to Art. 96X-1, paragraph C.P.C. In fact, it was not proved that the Plaintiff did not act in good faith and that Linoco suffered any damages.

The expenses for the trial will follow the decision and will therefore be charged to the Plaintiff, upon consideration of the value and nature of the claim and that the value of the seizure and the corresponding legal value are not determinable, said expenses will be paid to SINCAT in the amount of Lire 10,693,425 (ten million six hundred ninety-three thousand four hundred twenty-five), including Lire 438,000 (four hundred thirty-eight thousand) for attorneys' fees and expenses and Lire 10,160,000 (ten million one hundred sixty thousand) for lawyers' fees; to be paid to Linoco Lire 10,736,000 (ten million seven hundred thirty-six thousand), including Lire 406,000 (four hundred six thousand) for attorneys' fees and expenses and Lire 10,160,000 (ten million one hundred sixty thousand) for lawyers' fees; to be to Astro Protector Compania Naviera Lire 499,000 (four hundred ninety-nine thousand), including Lire 94,000 (ninety-four thousand) for attorneys' fees and expenses and Lire 390,000 (three hundred ninety thousand) for lawyers' fees.

P.Q.M.

The Court finally declaring, in the suit registered as No. 2852/1971 R.G., filed by B.P. Exploration Company (Libya) Limited, with headquarters in London, with warrant served on the 12th and 15th of January 1972 against Astro Protector Compania Naviera S.A., in the person of its legal representative pro tempore, with headquarters in Panama City, Panama Republic, and against Societa Industriale Catanese (SINCAT), in the person of its legal representa-

tive pro tempore, situated in Palermo, and against the National Oil Corporation L.A.R., with headquarters in Tripoli, Libya, in the person of Mr. Anis Ahmad Scetewi, as well as the suit registered No. 50/1972 R.G. filed by B. P. Exploration Company (Libya) Limited, with headquarters in London, against the aforesaid Societa Industriale Catanese and against the National Oil Corporation L.A.R., as described above, called in suit by SINCAT, with warrant served on 1/26/1972, disposed of the two aforesaid suits.

The Court rejects the claim by B. P. Exploration Company (Libya) Limited, declaring that it owned the shipment of oil transported to the Sincat plant of Priolo, by the ship Capetan Elias and consigned on behalf of the National Oil Corporation L.A.R., in the last days of December, 1971, in the aforesaid refinery plant;

The Court also rejects the claim advanced by B.P. Exploration Company (Libya) Limited, of its rights to exhibit and to keep the three samples of said oil and the copies of the documents of which the President of the Court authorized seizure on 12/30/1971 upon request from B.P.

The court does not validate such seizure.

It rejects the demand of National Oil Corporation L.A.R. that the B.P. Exploration Company (Libya) Limited be assessed damages for aggravated responsibility in the meaning of the 1st paragraph of Art. 96 C.P.C.

It condemns B.P. Exploration Company (Libya) Limited, to repay to all the other parties the court costs; to be paid to Societa Industriale Catanese (SINCAT) Lire, 10,693,425 (ten million six hundred ninety-three thousand four hundred twenty-five) for attorney fees and Lire 10,160,000 (ten million one hundred sixty thousand) including 406,000 (four hundred six thousand) for attorney fees and 10,160,-

000 lire (ten million one hundred sixty thousand) for lawyer fees; to Astro Protector Compania Naviera 499,000 Lire (four hundred ninety-nine thousand) for attorney fees and 390,000 Lire (three hundred ninety-nine thousand) for lawyer fees.

Siracusa, February 15, 1973

The President — signed S. Astuto

The Reporting Judge — signed Corrado Contaro

The Judge — signed Italico Libero Troja

Recorded in the Office of the Court of Siracusa, 3-13-73
(signed) The Officer — Nauceri

Recorded in Siracusa on 4-2 1973, No. 882MD 71 M. Vol. XI

Collected exactly Lire 15,500 (fifteen thousand five hundred) with signature from Atty. Ugo Gianformaggio, legal representative of SINCAT.

Signed — (illegible)

The Director — (illegible signature)

This copy is according to the original and is issued to Atty. Ugo Gianformaggio, for any legal purposes.

Siracusa, 4-9-1973

The Chancellor

(signature and stamp)

APPENDIX D

AGREEMENT

between

THE GOVERNMENT

OF THE LIBYAN ARAB REPUBLIC

and

NELSON BUNKER HUNT

This Agreement has been concluded in Tripoli, Libyan Arab Republic on this day Monday of 8th Jumada Elula, 1395, H.Y. corresponding to this 19th of May 1975 AD by and between:

1. The Government of the Libyan Arab Republic (hereinafter referred to as "the Government"), represented by the Minister of Petroleum.

2. Nelson Bunker Hunt, represented by Mr. John B. Tigrett, by virtue of his confirmed Power of Attorney, (hereinafter referred to as "Hunt").

WHEREAS: Hunt has reached agreement with the Government on compensation and the full and final settlement of all outstanding rights and differences between them, including differences relating to Law No. 42 for the year 1973 on the nationalization of the rights of Nelson Bunker Hunt in Concession No. (65)

NOW THEREFORE

The two parties have agreed as follows:

Clause (1):

The Government undertakes to pay to Hunt the sum of LD 5,525,000 (Five Million Five Hundred and Twenty-Five

Thousand Libyan Dinars). It is further agreed that the said sum shall be transferred in US Dollars, calculated on the basis of a ratio of exchange as announced by the Central Bank of Libya for the date of signature of this Agreement, to Hunt's Account with the Banque de Paris et des Pays-Das (Suisso) SA, 6 rue de Hollande, Geneva, Switzerland, free from any Libyan fees. This amount shall be final and shall not be subject to any auditing, adjustment or deductions by the Government.

Clause (2):

Upon the transfer of the above sum to its Account, Hunt agrees to discontinue and put an end to any arbitration procedures at any stage raised by Hunt against the Government and not to institute any lawsuit, arbitration or other proceeding of any kind against the Government, its Agencies, or any Libyan Public Organization or Public Corporation, by reason of law No. 42 for the year 1973, in respect to Concession (65) and the other concession granted thereto in the Libyan Arab Republic. Hunt shall further acknowlege and admits that it has terminated all its rights and that it has no further rights against the Libyan Arab Republic, its agencies or corporations as from this date.

Hunt shall, within two weeks of transfer of the said sum, publish an announcement in the foreign press that it has settled its disputes with the Libyan Arab Republic in accordance with this Agreement, provided such announcement is of the same size and is made in the same way as previously used by Hunt following the issue of the Law No. 42 of 1973.

Clause (3):

The Government undertakes to discontinue and bear all claims made by the Government and its Agencies against

Hunt in respect to Taxes, Royalties, Supplemental payments in arrear and the retroactive settlement payments relating to the posted prices, revenue claims and other claims relating to auditing.

The Government further acknowledges full and final settlement of all claims it may have against Hunt, including any it may have as successor in interest to BP Exploration Company (Libya) Limited.

Clause (4):

Agreement has been reached mutually on the basis of the abovementioned terms and conditions. This Agreement shall come into force as from the date of its ratification by the Revolutionary Command Council.

This Agreement is made in Arabic and English. However, in the event a dispute arises between the parties relating to the interpretation or the implementation of this Agreement, the Arabic text shall prevail.

FIRST PARTY

/s/.....

Minister of Petroleum

SECOND PARTY

/s/.....

John B. Tigrett